THE

PRACTICE

OF

Courts-Martial, and other Military Courts,

WITH

CHAPTERS ON INQUEST—COURTS OF REQUESTS—THREE TRIALS, (ARSON, LARCENY, AND MURDER, WITH FULL EVIDENCE,) —RULES OF EVIDENCE, AND OTHER USEFUL MATTER AND TABLES.

DEDICATED, BY PERMISSION, TO HIS EXCELLENCY

LIEUT.-GEN. SIR EDWARD BARNES, G.C.B.

Late Commander-in-Chief in India.

"That man that doth not know those things which are of use and necessity for him to know, is but an ignorant man; whatever he may know beside."—*Tillotson*, vol. i. p. 10.

BY

CAPTAIN WILLIAM HOUGH,

48th Bengal Native Infantry, and Deputy Judge Advocate General, Sirhind Division of the Army.

AUTHOR OF THE CASE BOOK, (1821,) AND OF THE PRACTICE OF COURTS-MARTIAL, (1825.)

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To the Officers of the Army of India.

GENTLEMEN,

I have to apologise for the delay in the appearance of this work, owing to the sickness of the printers, and other causes; and trust the excuse will be favourably received.

2. I have to offer my gratitude for the liberal support of my brother officers, 500 of whom have subscribed for copies; and though I derive no pecuniary advantage, I feel flattered by the kindness which has prompted them to support an humble individual in the publication of a work intended to be of public utility.

3. I have to return my best thanks to Lieut.-Colonel Sir J. BRYANT, Knt. J. A. G. Bengal Army, for the use of a valuable manuscript volume belonging to his office; to the Honorable W. H. L. MELVILLE, for the article on Rebellion; to J. W. McLEOD, Esq. Commissioner, Court of Requests, Calcutta, for his kindness in giving me information, on several occasions, regarding the practice of that Court; and to the Deputy Judge Advocates General of the Department, and to many other friends, for their kind aid in obtaining subscribers. My especial thanks are due to Captain PENNY, A. A. G., Presidency Division, for his kindness in correcting the Press for me.

4. The work is new of its kind. The Chapters on *Inquests* and *Courts of Requests* have never appeared in any similar work. There are no works extant, I believe, on these subjects; except "*Hutton*" on Courts of Requests; a work almost out of print. Cases decided both in *England* and *India* may be esteemed by the Army as Precedents:—the cases of *Arson, Larceny*, and *Murder*, with the *full evidence*, may also be useful.

5. I have spared no pains to render the work useful, and during nearly 28 years' service, and more than eight in the department, I have omitted no opportunity of collecting information on all the points comprised in this little work. I have quoted from seventy authorities, besides giving the result of my own experience.

6. The work is dedicated to the late Commander-in-Chief, as he kindly gave me his sanction at the end of the year 1832; and but for the cause above noticed, it would have been published during his period of command: I could not therefore have afterwards solicited the present Commander-in-Chief (the Right Honorable Lord W. C. BENTINCK) to allow me to dedicate it to him, without disrespect to both His Excellency and to His Lordship, and without forfeiting the character, which I shall always hope to hold among my brother officers, and the world at large.

WILLIAM HOUGH.

Kurnal, 29th March, 1834.

NOTE.—Late Adjutant General in this work, means Colonel CHRISTOPHER FAGAN.

Attention is solicited to the recommendations in the work—suggesting improvements.

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TABLE No. 1.

Shewing number of Officers and Soldiers and Camp-followers tried in 10 Years.

Years 1824 to 1833, both inclusive.		Eps.		Women.		Kg's		Company's.			Nat. Offs.		Native Soldiers Regulars.					Irregular Nat. Soldiers			Native.		
	Officers.	Warrant.	Estabmt.	King's.	Company's.	Dragoons.	Infantry.	H. Arty.	F. Arty.	Eur. Regt.	Regular.	Irregular.	H. Arty.	Cavalry.	Golundaz.	Sappers.	Infantry.	Local.	Provincial.	Lascars, &c.	C. Follow.	Women.	Total.
In 10 years	105	8	11	3	0	2	68	29	55	35	22	15	2	3	2	1	54	6	2	12	47	1	483

TABLE No. 2.

Number of Military Cases tried in 10 Years—Officers not included; nor Locals nor Irregulars, &c.

Years 1824 to 1833, both inclusive.	Absence.	Desertion.			Drunk.	Embezz.	Malingerer.	Miscellaneous.	Mutilating.	Mutiny.	Neglects.	Sleeping Post.	Total.	
		Desertion.	To Enemy.	Post.										
Europeans, ...	2	33	3	1	1	3	1	6	4	59	..	..	113	
Brahmins, ...	..	4	..	..	..	1	..	..	..	2	..	..	7	
Rajpoots, ...	..	10	..	..	..	..	..	2	..	1	1	1	15	See Note in Table No. 4, as to Castes.
Hindoos, &c.....	..	1	..	..	..	..	..	..	..	..	..	..	1	
Moosulmans,....	1	1	..	..	..	..	..	6	..	3	..	..	11	
10 Years, ...	3		53		1	4	1	14	4	65	1	1	147	

Europeans—1 in 1200, tried by General Court-Martial for the above crimes—and from 1 in 13 to 1 in 20 by inferior courts. *Dragoons*, tried by inferior courts, 1 in 110. Natives—1 in 22,457 by General Court-Martial. Native Cavalry—1 in 300; Native Infantry—1 in 237 by Regimental Court-Martial.

TABLE No. 3.

Number of Civil Crimes tried—Officers and Camp-followers included.

Classes.	Arson.	Burglary.	Child Stealing, &c.	Counterfeit.	Ellenb. Act.	Embezzlement.	Forgery.	Highway Robbery.	Manslaughter.	Murder.	Perjury.	Prevarication.	Rape.	Robbery.	Sodomy.	Theft.	Wounding.	Total.
Europeans, ...	2	1	..	3	3	..	..	..	11	9	1	..	3	5	1	7	2	48
Brahmins, ...	..	1	..	..	..	..	..	..	..	2	..	..	1	2	..	..	..	6
Rajpoots, ...	..	..	..	..	..	..	..	..	..	3	1	..	1	3	..	1	3	12
Hindoos, ...	..	..	..	..	..	..	..	..	..	2	..	..	..	2	..	..	..	4
Moosulmans, ...	..	..	..	..	..	..	..	1	..	3	..	..	..	3	..	..	1	7
Lascars, &c.	..	..	1	..	..	2	..	..	..	..	..	..	..	5	..	..	..	8
Camp-followers, ...	3	1	1	..	..	..	..	8	..	13	..	..	2	4	..	1	4	37
E. Women, ...	..	..	..	..	2	..	..	..	..	1	..	..	..	..	..	..	..	3
N. Ditto, ...	..	..	1	..	..	..	..	..	1	..	..	..	..	..	..	..	..	2
10 Years, ...	5	3	3	3	5	2	0	9	12	33	2	0	7	24	1	9	10	127

Europeans tried—1 in 2,109 by General Court-Martial—for the above crimes. Natives—1 in 11,700.

TABLE No. 4.

King's and Company's Troops, Company's Artillery, European Regiment, and Regular Native Army.

1824 to 1833 both years inclusive.	European Soldiers.											Native Soldiers.												
	Death.		Transportation.		Solitary Imprisont.		Imprisonment.		Flogging.		Total.	Death.		Transportation.		Hard Lab. in Irons.		Solitary Imprisonment.		Imprisonment.		Flogging.		Total.
Crimes.	C	M	C	M	C	M	C	M	C	M		C	M	C	M	C	M	C	M	C	M	C	M	
	5	7	6	22	5	93	9	7	3	12		6	..	*1	..	11	..	1	..	2	..	5	17	
10 Years,	12		28		98		16		15		169	6		1		11		1		2		2		37

N. B. The punishments in this Table exhibit those actually carried into effect, some of which by commutation.

Europeans flogged, 1 in 650.

Note. No. 1. By General Court-Martial.

Brahmins,....	13	Among Regular Troops,
Rajpoots, ...	27	
Hindoos, &c...	5	
Moosulmans,	18	

No. 2.

Brahmins,.... ..	21	Including *all* ranks and Camp-followers.
Rajpoots, ...	37	
Hindoos, &c.	16	
Moosulmans, ...	40	

No. 3. By Regt. Court-Martial.

Brahmins,....	36	Ditto,
Rajpoots, ...	56	
Hindoos, &c.	15	
Moosulmans,	39	

No. 4. In a Regt. N.I. there are, on the average,

Christians, ...	9
Moosulmans, ...	112
Brahmins,........	241
Rajpoots, ...	277
Hindoos, &c.	104

In the 10 Regiments, *Native Cavalry*, there are, Moosulmans, 2,088—2,088

Hindoos.	Brahmins, ...	1,132	
	Rajpoots, ...	789	
	Hindoos, &c.	135	—2,056
Official Document, 1st August 1832,			4,144

	M.	B.	R.	H.
In a Troop of Native H. A...	52	28	30	0

In the last six years, in the Sirhind Division, the trials as per caste, were as follows :—

	M.	B.	R.	H.
Native H. A.	2	1	1	0
Ditto Cavalry, ..	9	1	10	0
Ditto Infantry, ..	21	23	29	15

It will be seen that there are more *Moosulmans (Sepoys, &c.)* tried than *Brahmins*, and more Rajpoots than Brahmins, beyond all proportion—but, many of the Moosulmans are the lowest of the caste: and the Brahmins, though not tried, *instigate others to commit crimes!* In the *Barrackpoor Mutiny* in 1824, there were tried:

	Jemdr.	Naick.	Sepoys.
Brahmins,......	..	..	111
Rajpoots, ...	..	1	146
Hindoos, &c.....	..	..	35
Moosulmans,....	1	..	28
Total,........	1	1	320

TABLE No. 5.

Number of Trials in last 10 Years.

1824 to 1833, both inclusive.	Appeal.		Revised.	Acquitted.	Disapproved, not confirmed.	Remitted.	No. of Persons tried.
	Europeans.	Natives.					
	5	1	25	58	36	25	483
	†6						

* G. O. C. C. 29th Aug. 1825, Mutiny and Murder.

† From the year 1817 to 1833, (both years inclusive,) there have only been 11 cases in 17 years, and only one given in favor of the soldier, (*Leonard's* case, 237.)

ADDENDA.

Page.

138. The swearing of witnesses at Courts of Inquiry is illegal, there is no order in this army to authorize it. (J. A. G.'s Letter, No. 54, March 15, 1834. A. G.'s Letter, No. 564, 19th March, 1834).

167. *Civil Suits.* The attention of commanding officers called to the regulations published in G. O. 23rd August, 1816, for expediting the trial of civil suits, in which native officers and soldiers are concerned. [G. O. G. G. 9th June, 1826.] *Succession.* Restricted to Nos. 1, 3, 4, 6, 7. [G. O. G. G. 12th Dec., 1833.]

168, Note 33. And to European non-commissioned officers and soldiers.

180, line 12, 6, after "fact," add, "as it could be sent by court and returned, officially, by magistrate."

185, (33,) 2. Why not security in the *provinces!*

186. *Remark.* After "elsewhere," add, "only recover the *balance* of 200 rupees elsewhere. Should allow of commanding officer of one station, seizing defendant's goods in another cantonment; upon the same principle as the judge does."

202. *Ejectment.* Decided in plaintiff's favour, 12th November, 1833.

210, last line, add, "might claim as an Ayah, &c."

226. *Sikh Oath.* The following is the mode of administering it: Question.—Whose Sikh (disciple) are you? Answer.—I am the Sikh of the Gooroo. Q.—If you are the Gooroo's Sikh, in what do you put your faith? A.—In the Granth. The person administering the oath, then desires the deponent to put his hand on the Granth, and considering it as the book of his faith, to speak the truth, as he hopes for salvation in the world to come. I have seen the Granth put on the head, as the Koran is among Moosulmans.

Mahrattas.—The Bulbhuddur oath is the most sacred; also among other Hindoos, taking Gunga Toolsee in the hand.

230, line 19. *Sentence. Reduction* to serve as privates in the ranks, and not suspension from rank and pay, in the case of native non-commissioned officers. [G. O. G. G. 18th Feb., 1834.]

Page.

231, 26. To insure regularity in proceedings. Remarks by general or other officers, commanding divisions, or field forces, to be invariably published in station, detachment, or regimental, orders, as the case may be. [G. O. C. C. 27th Jan., 1834.]

237, (1.) 3.—Gunner John McKee, 6th company, 2nd battalion, artillery, selling a chest to *two* gunners. (7th Oct. 1820.)

6, Note (2), Meer Assud Ally, havildar, 24th N. I. allowed (absenting himself from his post). G. O. C. C. 3rd Feb., 1834.

248, top. If prisoner (an officer) refuse to come, the court should apply to commanding officer of the station, who has ordered the field officer of the week (if required) to send a file of men from the European main-guard, under an officer, to bring him to court.

255. *Suspension.* If court intend to suspend an officer from his *allowances*, as well as pay, must express " rank, pay, and *allowances*," otherwise he does not lose *them*. (Section 14, Art. 8, *Company's*.) Letter of Secretary to Government Military Department, No. 95, 7th Nov. 1833. J. A. G. No. 275, 13th Dec., 1833.

255. *Sentence* 1.—By the Regulation of the G. G. C. 7th October, 1833, corporal punishment is abolished as a punishment in the *Native* (*Criminal*) Courts, and *additional* imprisonment substituted in lieu thereof. 2.—*Hard labour in irons*, (except in cases of Murder, Dacoity, Highway-Robbery, Burglary, Theft, receiving stolen or plundered property, Forgery, Perjury, Arson, Rape, and generally all other offences, in which a sentence of five or more years' imprisonment may be passed,) is commuted to a fine (the maximum of any fine is 1000 rupees). And even those sentenced may have it remitted 'by Session Judges, Commissioners, or the Nizamut Adawlut Court,' and those now in Jail also. Fine, if not paid, by the time fixed, labour without fetters until the fine be paid, or, if not paid, until the completion of the term of his sentence. This regulation not to affect *Jail discipline*. 30 ratans are equal to one year's additional imprisonment. The *fine* must depend on the means of the party, &c.

ERRATA.

Page. Line.

5, 18, should be ' drinking.' [colen.

8, 11, bottom after ' person' add semi-

16, 12, 7, *dele* ' to' ; *for* ' male' *put* ' made ;' line 10, 6, *dele* mark before ' free.'

17, 13, *dele* comma after ' not' and put it after ' fined ;' *after* ' Rupees' *add* ' paid to informer.'

19, 8, bottom, ' when, to one' in parenthesis.

22, 3, 6, *for* ' ante' *put* ' infra.'

27, 9, 6, *for* ' to' *put* ' by.'

31, 7, *after* ' transfer' *put* ' of.'

42, 2, 2, *before* ' on' *put* ' even.'

—, 5, note 65, *after* ' 2nd' add ; and last line, *for* ' or' *put* ' of'.

45, 5, ' disbursed.'

1, 2, 3, make column lines.

1, note 69, ' land measure.'

The whole in one line of columns longitudinally.

49, 15, bottom, *put* ' if.'

3, „

note 76, comma after ' 101 ;' *after* ' and' *put* ' page.'

53, 2, no. 16, ' Commissary General.'

54, 1, no. 11, ' ditto ditto.'

58, no. 20, *Dress* ' no man.'

64, no. 20, ' Peinbeira.'

65, sentries, not sentence, (marginal note) no. 6, *Thomar*.

69, 15, 296-7.

77, 2, after ' room' put, ' and stabling for his horses.'

78, note 121, 1, ' Hatred.'

81, (125) after 109, add ; after 9, dele ; and put after ' Company's' ;

83 to 88, *Civil Police*.

86, 2, 5, ' is' not ' as.'

3, 4, ' C. J.' not ' C. S.'

87, (134) 2, ' by Shaik.'

90, 15, ' us' to ' concur' parenthesis.

8, ' assistant' not ' acting.'

91, (8) 3, ' premunire.'

8, Full stop after ' felony.' In.

93, (13) 3, 6, ' course' not ' cause.'

94, 11 3, ' send' not ' sent.'.

96, No. 12, ' repeated.'

100, 19. ' Proceedings' not ' Process.'

107 (54) ' Houseman.'

111, 3, 6, ' was of.'

Page. Line.

117, 2, 4. ' Register.'

125, 3, 6. ' Sugared.'

126, 4, 6, after ' tepid' *dele* comma.

136, 12, 6, ' 1st assistant.'

3, 6. ' Proceedings.'

137, top ' opinion.'

138, (19) ' parity.'

139, *dele* ' Section 10.'

140, 10, 6. Comma after ' members.'

141, 8. ' Notwithstanding.'

(36) ' of arbitration.'

14, ' sine die.'

143, 2, 6, ' them.'

144, 4, 8, ' whereto.'

(50) ' authorized to examine on oath.'

148, 9, 6, ' such account.'

152, (6) 6. ' Proceedings.'

153, marginal, ' surplus.'

158, 9. ' To pay,' not ' repay.'

161, No. ' proceedings.'

162, 4, 6, ' to Secretary to.'

166, 13, 6, ' to §.'

168, (32) ' note 30.'

176, 8, ' execution' (14).

179, 14, ' Mrs.' ' *Limitation* (21 Jac.' 1, S. 16), ' in Banco.'

180, 2, 6, ' suing.'

181, 7, ' is' not ' are.'

182, 18, after ' less' add ' as well as cost.'

183, (23) article 111.

9, ' cry' not ' lay.'

184, (26) 6, ' note 24.' 1.

189, (43) N. B. 3, after ' Regt.' put ' or Dept.'

6, *dele* 1 after ' or.'

191, 3, ' with,' 15, after ' servant' put ' serving as Ayah, &c.'

195, (48) 1, ' *on* the.'

206, 15, 6, ' £23.'

210, 5, *dele* 2nd 'not.'

212, 10, 2, ' party against whom made' *dele* ' making it.'

(10) 1, ' evidence, not.'

214, (23) 18. ' Pottahs.'

215, 26, 2. ' District.'

27, 5, after (28) add ' should only be received on proof of Death of the witness ; being designedly kept away, &c.'

217, after ' 34' ' 35' not, ' 38.'

Page. Line.
220, 9, 2, ' dire.'
225, 11, 3. ' Pot'pee' 4, ' Pot'hee' Hu-ribuns.
226, 16, 6, ' course.'
227, 15, ' Goojur.'
228, (4) ' 1823.'
230, 19, after 'dismissed,' put 'improper.' 22, 1, ' no *fresh*.'
233, 12, 6, ' *Procedure*.'
236, 5, 3, ' *Regimental*.'
238, 9, ' Captain S.'
241, 6, 5, ' *mete* out.'
244, (1) 2, ' Geo. iv.' l. 14, ' p. 271.'
248, top line, *dele* ' 3.' 16, ' be before.'
249, 10, *dele* ' in,' l. 14, ' be' *not* ' he.'
250, 5, note 27, ' H. C.' l. 10, ' Prosecutor,' *not* ' President.'
251, note 29, ' Art. 94.'
252, note 33, ' putting.'
253, 23, ' Courts,' note 38, l. 14, *after* ' if' *add* ' they fail :' *dele* ' do not,' *put* ' will.'
259, note 75, 1819.
260, ' Boyle' throughout.
262, note 7, ' A' *not* ' B ;' 273, l. 4, 6, ' or' *not* ' as.'

Page. Line.
274, Witnesses, put pages 260, 261, 262, 263, 264, 265, 265, 265, 265.
278, 2, 4, ' there, on.'
285, note 12, ' required.'
286, Witnesses, put pages 275, 277, 279, 280 ; note (282,) 282, 282, 283.
296, 16, 6, ' Boyle.'
298, 5, ' Awake.'
300, 12, 6, ' Surgoine.'
302, 2, 6, ' Hannah ;' 303, l. 5, *dele* ' up ;' l. 14, 6, ' to the.'
305, 10, ' bought.'
310, note 49, ' Boyle.'
325, 16, ' was absent.'
331, top, ' *c*. 74.'
333, note 5, last line, *dele* ' or.'
335, 7, ' Commission ;' 8, l. 3, ' if not ,' note 22, l. 2, Fonbl.
336, note 24, Peake ; note 27, l. 1, ' lineal ;' note 25, ' get.'
3338, 6 ' Misadventure.'
341, 18, ' Military.'
342, 10, ' of all ;' l. 20, ' Habit.'
343, 4, ' House or.'
344, 16, ' rent and 12 P. C. ;' l. 28, ' are not.'

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MILITARY POLICE.

CHAPTER I.

Section 1.—Conduct of Soldiers.

"The attention of commanding officers of regiments is called to the importance of inculcating upon the soldier, by every means in their power, and by the *example* and precept of his superiors, the propriety of civility and courtesy in his intercourse with all ranks and classes, and in his demeanour in quarters, in the streets, &c.; especially on *Sundays*, when drunkenness, irregularity, and disorder should be particularly noticed and checked. Should admonish the soldier to pay the greatest deference and respect to magistracy and to civil authority, without reference to the station in life of the individuals; the character represented, and the authority with which it is invested, being the proper subjects of attention." Conduct of Soldiers.

"Nothing tends more to discipline and subordination, and to prevent irregularities producing exposure, than habits of general courtesy; and a conviction that while he is marked by his dress and bea..ing, so will any disorderly or rude act, committed out of Barracks, be noticed."—(Circular, Horse Guards, 24th June, 1830. Rule No. 8.)

Section 2.—Drunkenness.

"All men, confined for drunkenness, should, if possible, be confined by themselves, (and in the Black Hole,) until sober, and not in the guard-room, where they are often teased and provoked to acts of violence, and insubordination."—(Do. Rule No. 4.) "The lodgings of married soldiers, which are resorted to by men for the purpose of *gaming, drinking,* and other *irregularities*, should be visited, at *uncertain* h..rs, by Color Serjeants and even by officers." (Do. No. 8.) Drunkenness.

Section 3.—Confinement.

"Unless preparatory to trial, soldiers are not placed in *close* confinement for more than 48 hours. The time of confinement in the Confinement.

defaulter's room does not exceed seven days, (unless a prisoner is to be tried,) taking duty, drills, &c. Soldiers may be confined to the Barracks for 2 months, (not in use in India,) when they are not allowed to pass the sentries, or have access to the canteen; wine and spirits being, at the discretion of the commanding officer, stopped, on stations where such are issued; and the commanding officer uses his discretion as to such soldiers taking the duties of inlying picquet, of fatigue, drills, and parades.

Solitary Confinement.

2. *Solitary Confinement*(1) to the Black Hole (or Conjee House in India) does not exceed 48 hours; unless awarded by sentence of a Court Martial: is, as much as possible, reserved for cases of *drunkenness, riot, violence,* or *insolence* to superiors; and in aggravated cases, should precede the further punishment of confinement to Barracks, extra drills, and duties of fatigue, or drudgery, &c. (Do. No. 8.)

"If a soldier refuses to obey an order distinctly given, or resists the authority of a non-commissioned officer, he should be confined *without altercation,* and immediately reported to the troop or company officer, or the Adjutant. Many cases of what is called mutinous conduct, arise from the improper way in which non-commissioned officers speak, or give orders to the men."—(Do. No. 7.)

Drunkenness. Circular H. G. 24th June, 1839.

As *Drunkenness* leads to almost every crime, whenever a soldier is observed to be drunk, he should be instantly confined that he may not commit acts of violence; and should be allowed to sleep off the effects of liquor, quietly. There are two points to attend to, *1st, Native* soldiers should not be ordered to seize *Europeans,* if possible to be avoided; as they will resist a Native, when they will not an European. *2nd.* If a non-commissioned officer and file of men are sent to confine an European soldier, the men only, seize him; that, if drunk, he may not "strike a non-commissioned officer in the execution of his duty:" while if he strikes the men, he does not commit a crime of the same magnitude; and they can overcome all resistance! Any officer, though of another regiment, may confine a soldier; but it is better to send for a file of Europeans to the nearest Guard or Barrack, than to seize the man himself; or employ *Native* soldiers; and, till they come, to watch his motions.

(1) Regiments in India have only, as guards, the Regimental Quarter Guard, and Conjee Houses, to the latter of which a prisoner, convicted, is sent after trial, when imprisonment is awarded: or when accused of serious crimes, for better security.

Section 4.—Minor Punishments.

"The commanding officer uses his discretion in delegating to officers, commanding troops or companies, and to the adjutant, the power of ordering punishments, for *minor offences*, not exceeding three day's drill, with confinement to Barracks. These are ordered at morning or evening parades; and on the parade. A report is made to the commanding officer, at the orderly room, immediately after parades, for his approval, or otherwise; or next morning. In cases requiring more serious notice, a report is made, through the officers commanding troops or companies, or the adjutant, to the commanding officer, who in the presence of the officer, the adjutant, serjeant-major, and the non-commissioned officer of the squad, and of the prisoner, investigates the case; and, having satisfied himself as to the nature and degree of the crime, should at once, award punishment; or try the prisoner by a Court Martial!" (Do. Rule No. 2.) Minor Punishments.

"The *Minor Punishments* are—Drill in heavy marching order for three or four hours a day, at proper intervals; or such other reasonable punishments as he may think proper." (Extra duty-drills, See Sec. 3, *confinement.*) "The Log and standing under arms, are prohibited." (No. 8.)(2)

"No offender should be allowed the *option* of such punishment, or of standing a Court Martial; nor should a commanding officer admit of the *right* of *appeal:* though he *may* vindicate the justice of his first order, by *allowing* of a Trial." (Do. Rule No. 8.)

Section 5.—Conduct towards Non-Commissioned Officers.

"It is essential to uphold the station and respectability of the non-commissioned officers. *Serjeants* should, in no case, be sent to the Guard Room and mixed with the privates during confinement; but be considered as placed under arrest." (Do. Rule No. 5.) They are kept to their room in the Barracks, or tent. But if charged with murder, or other serious crime, Military or Civil, they are confined in as strict a manner as soldiers. Conduct towards non-commissioned officers.

"Non-commissioned officers should not be reproved, in the presence or hearing of the men; lest it should weaken their authority or respectability; or humiliate them in the eyes of their comrades, or inferiors: unless it be necessary, for the sake of example, that the reproof should be *public;* or that it has been provoked by *repeated* neglect or irregularity. Mild admonition will generally answer best." Circular H. G. 24th June, 1830.

(2) The Log, and Back-board Drill are still used in the H. C.'s European Corps.

(Do. Rule No. 6.) "Serjeants, &c. are not to be allowed to escape trial by Court Martial, by resigning their situations." (Do. Rule No. 8.) (3)

SECTION 6.—TROOP, COMPANY, AND SQUAD CONTROL, AND POLICE.

Troop, Company, and Squad Control, and Police.

"It has been successfully practised in some corps, to hold troops, companies, and squads, generally, responsible for the regular conduct of the individuals, taking care that the consequences of this responsibility shall not involve the punishment of individuals whose conduct shall have been uniformly regular and good. In others, a troop, company, or squad *Police* has been introduced, under the responsibility of steady sergeants. These expedients are left to the discretion of commanding officers; as, also, the encouragement of manly games, and exercises; if they do not lead to excess in drinking. The great object being the *prevention* of crime." (Do. Rule No. 8.) (4)

SECTION 7.—REGULATIONS TO BE OBSERVED BY TROOPS IN BARRACKS.

Regulations in Barracks.

"The attention of company officers is called to the care of the several articles of public property." (General Regulations and Orders, p. 205.)

"No wine, beer, or spirituous liquor is to be sold within the Barracks to the non-commissioned officers or private men of any regiment stationed therein, except at the established canteen."

"No tippling to be allowed in any of the Barrack rooms allotted for the use of the non-commissioned officers and soldiers." (Do. p. 208.)

SECTION 8.—DUTIES IN GARRISONS AND CANTONMENTS.

Duties in Garrisons and Cantonments.

"Officers on Guard are to go their rounds frequently during the night. A non-commissioned officer with a file of men, is frequently to visit the sentinels during the day."

"When there is a field-officer of the day (or captain) he is to visit all Guards frequently during the day and night; to turn out the piquets in case of *fire*,(5) *alarm*, or *riot*. Every regiment must have

Fires, alarms, riots.

(3) This is done in the H. C.'s European Corps; but there is no good reason why it should be allowed in either European or Native Regiments, &c.

(4) See Sect. 1, para. 4. Standing Orders, Bengal Native Infantry.

(5) *Fire engines* are allowed one to each European Regiment, *(thatched Barracks)*, two to each European Cavalry Regiment *(thatched roofs)*, one to each Regiment Native Cavalry *(thatched stables)*, under charge of Quarter Guard, lodged in tiled sheds, kept filled by quarter-master's establishment; worked once a week, under European non-commissioned officer, and subordinate officer of the Department of Public Works. *Circular* of the Military Board Orders, No. 1097, July 10, 1832. There are Regulations in cantonments, for all Bihishtees of Corps to

an alarm-post assigned to it, to which it will repair in case of fire, or any other extraordinary alarm, either by day or night."

"All *Guards* are to be extremely alert and vigilant in the performance of their *night* duties, and to be ready on all occasions, to furnish patroles, both of cavalry and infantry, on the requisition of constables and other peace-officers, on their representing that they have reason to believe, that there are persons engaged in the commission of burglaries, or other nightly depredations, in the vicinity of their posts." (Do. p. 217.) Patroles. Police officers.

"Officers are to remain constantly at their guards, except while visiting their sentinels, nor are they to enter any house or place of public amusement." (Do. p. 218.)

"Officers are watchfully to superintend the conduct of the non-commissioned officer, taking care that they are exact in the performance of their duty, that they maintain a proper authority, and prevent any species of irregularity amongst the men."

"The officers and non-commissioned officers are responsible that no *drunking*, *swearing*, *gaming*, or *other irregularity*, is allowed in the Guard Room." (Do. p, 219.) Guard room.

"When a *fire* breaks out, or any *alarm* is raised in a garrison, all Guards are to be immediately under arms; the barriers are to be shut, draw-bridges drawn up, and so continue till the fire is extinguished." (Do. p. 221.)

"In Cantonments, the alarm-posts of each regiment, and of brigades, must be fixed, the troops must be made acquainted with the regimental alarm-posts, and the officers commanding regiments with that of the brigade." (Do. p. 226.) Alarm Posts.

"No non-commissioned officer nor soldier is to quit cantonments without a pass signed by the commanding officer, or by the adjutant under his authority." Passes.

"Every encouragement is to be given to the people of the country to supply the markets, and any soldier using them ill, or attempting to defraud them, will be punished in the most exemplary manner." (Do. p. 227.) Supplies.

repair to places where fires occur, on the alarm being given, by Drums and Trumpets of regiments, passed down the whole line. All the men of the regiment in which it occurs turn out: and parties are sent from it, and from other corps to preserve property from plunder: while some working parties assist in putting the fire out, pulling away combustible matter. As attacks are sometimes made during fires by thieves, or by an enemy; great vigilance is required of all guards, and piquets,

SECTION 9.—RIOTS, SUPPRESSION OF.

Riots, suppression of.

(*The Military may act, in cases of sudden and great emergency, without the presence of a peace-officer of any description.*

The opinion of the Attorney-General, (late Lord Ellenborough,) is in point, and is as follows :—" I understand the *disturbances* here meant, to be such as amount to the legal description of *Riots*. The word "*disturbance*" has no legal and appropriate meaning beyond a mere *breach of the peace*, which is not, however, the sense in which the word is used in this case; the case plainly importing *a breach of the peace by an assembled multitude*."

" In case of any such *sudden riot and disturbance*, as above-supposed, *any* of His Majesty's subjects, without the presence of a peace-officer of any description, *may arm themselves*, and of course may use *ordinary means of force* to suppress such riot and disturbance." " This was resolved by all the Judges in the 39th of *Queen Elizabeth*" (1596), " to be good law, and has certainly been recognised in *Hawkins* and other writers on the crown law, and by various Judges at different periods since."

Military may act, in sudden tumults, without the civil power.

" And what His Majesty's subjects *may* do, they also *ought* to do for the suppression of public tumult, when an exigency may require that such means be resorted to."

" Whatever *any other class* of His Majesty's subjects may allowably do in this particular, *the military may unquestionably do also*."

" By the common Law, every description of peace-officer may, and ought, to do not only all that in him lies towards the suppression of riots; but, may and ought to, command *all other persons* to assist therein."

" However, it is by all means advisable to procure a justice of peace to attend, and *for the military to act under his immediate orders*, when such attendance, and the sanction of such orders, can be obtained, as it not only prevents any disposition to unnecessary violence on the part of those who act in repelling the tumult, but it induces also, from the known authority of such Magistrates, a more ready submission on the part of the rioters, to the measures used for that purpose;—but still in cases of *great and sudden emergency, the military, as well as other individuals, may act without their presence*, or without the presence of any other peace-officer whatsoever."

(signed) EDWARD LAW.

(*General Regulations and Orders, p.* 187.) (6)

Lincoln's Inn, April 1, 1801.

SECTION 10.—EMBARKATION OF TROOPS.

"Whenever troops embark on board of transports or other vessels, in any port of the United Kingdom, the General or other officer commanding is to direct the Deputy Inspector of Hospitals, or senior medical officer of the medical staff, at or near the station, to go on board each vessel, and make a most minute and particular inspection, before the troops embark, of the state and condition of each ship." (Report to Adjutant General and to general officers from stations under their command.) Embarkation of Troops. Medical Inspection.

2. "An inspection to be made by staff-officers as to the fitness of the vessels, accommodation, and stores." (General Regulations and Orders, p. 309.) By staff officers.

3. "The General, or an intelligent staff-officer, (not under the rank of a field-officer) to inspect the state of each regiment." State of Regiments.

4. "The troops remain under the orders of the general, &c. officer until they proceed to sea. If detained, ships and troops to be inspected." (Do. p. 310.)

(6) "By Act 1, Geo. I. March 17, 1714, entitled "An Act for preventing *Tumults* and *Riotous Assemblies*, and for the more speedy and effectual punishing of the Rioters," every *Justice of the Peace, Sheriff, under Sheriff, Mayor, Bailiff, or other head-officer*, of any County, City, or Town Corporate, is authorized, empowered, and required, on notice or knowledge of any unlawful, riotous, and tumultuous assembly within the limits of their respective jurisdictions, to resort to the place where such assembly shall be—of persons to the number of 12, or more, and there to make, or cause to be made, the *proclamation*, prescribed by the said act, for dispersing such assembly." (Do. p. 189). And further, if the reading of the proclamation be by force opposed, or the reader be in any manner wilfully hindered from the reading of it, such opposers and hinderers are felons without benefit of clergy: and all persons to whom such proclamation *ought to have been made*, and knowing of such hinderance, and not dispersing, are felons without benefit of clergy. There is the like indemnifying clause, in case any of the mob be unfortunately killed on the endeavour to disperse them." (Blackstone, iv. 142.)

PROCLAMATION. "Our sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the 1st year of King George, for preventing tumults and riotous assemblies."—God save the King.

There is no mention of reading the Act 3 times; silence is to be commanded and the Act read with a loud voice, the proclamation *(or like in effect)* to be read amid the rioters or as near to them as he (the reader) can safely come. Those not dispersing within *one hour*, and amounting to 12 in number (or more) shall be seized; and the offenders shall suffer death, as felons, without benefit of clergy. (Burn's Justice, vol. v. 22.)

5. "That the strictest discipline is established on board, and that the "Regulations for troops on board of ship" are most strictly observed." (Do. p. 311.)

SECTION II.—DUTIES OF TROOPS ON BOARD OF SHIPS.

Duties of troops on board ships of war.

1.—*On board of ships of war.* "Whenever any of H. M.'s forces are embarked on board ships of war, or any other ships regularly commissioned by H. M., employed in the transportation of his troops, the officers and soldiers of such forces, from the time of embarkation, shall strictly conform themselves to the Laws and Regulations established for the government and discipline of the said ship, and shall consider themselves, for these necessary purposes, under the command of the senior officer of the particular ship, as well as of the superior officer of the fleet (if any), to which such ship belongs." (144 Article of War.)

H. E. I. Company's troops &c.

2. The same rules apply to the H. E. I. Company's troops embarked on board H. M.'s ships (H. C. Articles of War, Sec. xx. 1825.)

Naval Regulations.

3. There are Naval Regulations and Instructions published by the King in Council. The above article points to them, and does not make officers and soldiers amenable to the Naval Articles of War. In case of mutiny by any officer, or soldier, &c. or of disobedience of any orders given in time of action, or when the ship is in danger; which are extreme cases; there seems no doubt, if requisite, that the Naval commanding officer would be held authorised to exercise summary punishment, upon the same principle that in the army, in cases of a sudden mutiny, a commanding officer would be warranted in holding a drum-head Court Martial, at any hour of the day or night (92nd Article of War); but, in such an emergency, (for the safety of the ship which may be endangered by a storm, during action, or by a mutiny among the seamen or soldiers) which might even oblige the Captain to cut down, or shoot, any person for which he would afterwards have to account, might require immediate punishment, for the sake of example, the ship being endangered unless such punishment were inflicted on the spot.

Artillery men.

Unless such emergency existed as, without immediate example, would endanger the ship, the proper course is that which was directed by the Lords of the Admiralty on the embarkation of Artillery men, on board of His Majesty's Bomb-vessels in 1804, viz. "*in case of behaving improperly, they should be confined in such manner as is usual on board His Majesty's ships; and if on Home Service report to the Secretary, that a representation may be made to the Board of Ordnance? If*

Soldiers how punished in ordinary cases.

abroad to report to the Commander-in-Chief or senior officer of His Majesty's ships on the station, who will communicate the same to the General Officer commanding His Majesty's troops there, in order that the person or persons so offending may be tried for their conduct by a Court Martial." (Prac. Ct. Ml. p. 612.)

The same rules must apply to all other troops, unless directions to the contrary be given. Other troops.

It is clear, that the articles of war for the army, or orders, cannot destroy the force of the naval articles of war, (22 Geo. II. c. 33 : 19 Geo. III. McArthur, vol. i. 325,) which are an Act of Parliament. The words of Art. iii. 22 Geo. II. c. 33, "If any officer, mariner, *soldier*, or other person of the fleet, convicted of giving intelligence, &c. to any enemy or rebel (without leave), shall by the sentence of a Court Martial be punished with death." (McArthur, vol. i. 326, and Art. xxxvi.) "All other crimes, not capital, committed by *any person or persons in the fleet*, which are not mentioned in this Act, or for which no punishment is hereby directed to be inflicted, shall be punished according to the laws and customs in such cases used at sea." (Do. p. 336.) And of Sec. v. "Nothing in this Act contained shall extend, or be construed to extend, to impower any Court Martial to proceed to the punishment or trial of *any land officer or soldier, on board any transport ship, for any offences specified in the several articles in this Act;*" (Do. p. 337 :) seem clearly to give the naval officers, the authority to try soldiers; and to legalize the naval regulations and instructions, "used at sea."(7)

SECTION 12.—DUTIES OF TROOPS ON BOARD OF TRANSPORTS.

1. "No situation more requires the personal superintendence and care of officers, or a stricter conformity to regulations, than *on board ship.*" Duties of troops on board of transports.

2. "No officer to quit the ship without leave."

3. "No officer to sleep out of the ship without special leave."

4. "The command on board each vessel is vested in the senior officer, of whatever branch of service, who commands all the troops, where there are detachments from different regiments." (General Regulations and Orders, p. 315.) Senior officer commands.

5. "Complaints against masters to be made by the commanding officer to the agent of transports." (Do. p. 319.)

6. "Liquor not to be brought on board, to be disposed of among the men." No liquor.

(7) A copy of the Naval Articles of War, and Naval Regulations and Instructions, should be furnished to every regiment, and to every officer commanding a detachment on board ships or vessels of war, and transports.

7. "To prevent accidents from fire, a sentry to be constantly placed at the cooking-place or caboose, (one on each side, if sufficient men,) with orders not to allow fire of any kind to be taken without permission."

Lights put out. 8. "All lights (except those over which there are sentries) to be put out at 8 o'clock at night; officers' lights to be put out at 10 o'clock, except the commanding officer gives leave for a longer time, in cases of sickness or emergency." (Do. p. 320.)

No smoking below. 9. "No smoking between decks, nor any lights among the men, except in lanterns." (Do. p. 321.)

10. "Regularity and decency of conduct peculiarly necessary on board of ship. The commanding officer, by the most decided and summary measures, to check any tendency to insubordination, and every species of vice or immorality, or any thing to interrupt the harmony and good understanding on board." (Do. p. 324.)

No insubordination, vice, &c.

11. "No land officer or soldier to be tried, by Court Martial, on board any transport ship, for any offences specified in the several articles in this Act." (Sec. v. 22 Geo. II. c. 33: McArthur, vol. i. 337.)

Section 13.—Duties of Troops on Board of H. E. I. Company's Ships.

H. M.'s troops on board E. I. C.'s ships. 1. "*His Majesty's* officers in command, in all respects, to conform to the rules and regulations of the ships, so far as they do not militate against the discipline and good order which prevail among His Majesty's troops. The officers and men to accommodate themselves to the customs of the ships, so that cordiality may subsist between the two services."

Customs of ship.

2. "Commanding officers to pay the greatest attention to every requisition by the commanders of ships, consistent with the good of His Majesty's Service; and enforce strict obedience from all under them."

Guard. 3. "A guard to mount daily in harbour." (General Regulations and Orders, p. 331.)

Sentries. 4. "The commanding officer to consult with the commander of the ship as to the posting of sentries."

No liquor. 5. "Every possible precaution to be taken to prevent liquor being brought into the ship."

Watches. 6. "The subaltern officers, non-commissioned officers, and men, to be divided into watches, the same as the ship's company; all sentries to be furnished by the watch on duty."

7. "The non-commissioned officers and men, to be formed into messes, according to the regulations of the ship; and appointed to quarters." Messes. Quarters.

8. "To train and exercise the troops, when the weather permits, commanding officer to apply to the commander of the ship, to know the hours and place for the same." (Do. p. 333.)

9. "Commanding officers responsible for the conduct of the soldiers, in case of being attacked by the enemy." (Do. p. 332.)

10. *Court Martial.* "If requisite to hold a Court Martial and inflict punishment, commanding officer to apply to the commander to know the hour and part of the ship most convenient; deferring the punishment as long as the commander shall think necessary, and assign his reason for so doing." Court martial.

11. "Particular attention to be paid to the regulations of the ship as to lights; and no smoking between decks." (Do. p. 333.) Lights. Smoking.

12. "To insure a right understanding on all points of discipline and duty, the commanding officer will early communicate these instructions to the commander of the ship; who will produce his instructions to the commanding officer." (Do. p. 337.)

13. "When there are King's and Company's troops on board the same ship, proceeding to *India*, the senior officer of His Majesty's Service shall command both, when to the west of the Cape of Good Hope, and the Honorable Company's officer (if senior) when to the east." (Do. p. 338.) King's and Company's troops.

14. "*Honorable Company's troops*, are subject to the same rules as regards His Majesty's troops, relative to the regulations of the ship. By section xlvii. 4 Geo. IV. c. 81, officers and soldiers enlisted in and transferred to the service of the United Company, and all officers proceeding in charge of, and doing duty, with such officers and soldiers are, during the passage, subject to all the provisions and regulations of the act, the same as officers and soldiers are in India subject to it; by section xlviii. such officers are triable after their arrival at the place of their destination." H. C.'s troops.

15. "Every discharged soldier, until his arrival and debarkation at his place of destination, in *Great Britain* or *Ireland*, subject to this Act (4 Geo. IV. c. 81,) and the Articles of War framed, or to be framed by His Majesty for the Company's forces." (Sec. liii.) Discharged soldiers.

Section 14.—Duties of Troops embarked as Guards on Board Convict Ships.

"When detachments are embarked as *Guards* on board of *Convict Ships* for New South Wales, they are to assist the civil officers, to Duties of troops on board convict ships.

whom the care of the convicts is intrusted: in addition, therefore, to the foregoing orders, it is the duty of the officers in command of these detachments, to afford every aid to the superintendents of convicts, by furnishing such sentinels, and adopting such measures, as they may deem necessary, for the security of the prisoners intrusted to their charge." (General Regulations and Orders, p. 325. See Nos. 10 to 13, and 15.)

Obey superintendents.

Sentries.

SECTION 15.—DISEMBARKATION OF TROOPS.

Disembarkation of troops.

1. "The General or other officer commanding to order, on the arrival of troops at any port of disembarkation, the vessels to be immediately visited by an intelligent staff officer, and by a competent medical officer, from whose report he will ascertain the actual state of the men and ship; what casualties have occurred on the passage; and whether the ship has been properly found, and the men supplied with accommodation and provisions, according to regulation." (General Regulations and Orders, p. 310.) (See also Sections 10 to 14.)

SECTION 16.—DUTIES IN CAMP.

Duties in camp.

Guards.

1. "On the arrival of a brigade, or a battalion, in camp, the quarter and rear-guards of regiments will immediately mount; and advanced piquets when required be posted. The grand guards of cavalry will be formed."

Piquets.

2. "No huts to be allowed except in the rear of the line of petty-sutlers." (General Regulations and Orders, p. 223.)

Passes.

3. "No non-commissioned officer or soldier to quit camp without a pass, signed by the commanding officer, or adjutant of the regiment, by his authority." (Do. p. 227.)

Market people.

4. "Every encouragement to be given to the people of the country to supply the markets; and any soldier using them ill, or attempting to defraud them, will be punished in the most exemplary manner."

Burn no huts.

5. "On the breaking up of a camp, no hut or straw is to be set fire to, unless particular orders are given for that purpose; under the most severe penalties."

No firing.

6. "No firing in camp on field days, without leave." (Do. p. 227.)

Ready to march.

7. "The troops to be ready to turn out at all times, by day or night, and in half an hour be found at the head of the encampment, and baggage packed, prepared to march off."

Suspicious persons.

8. "All suspicious persons about camp to be apprehended, and sent under a proper guard to head-quarters." (Do. p. 228.)

9. "Guards not to molest any persons coming to camp with provisions; nor exact or receive any thing for their free passage." Provisions coming to camp.

10. "Persons from the enemy, with a flag of truce, to be treated with attention and civility. Means to be taken to prevent their gaining intelligence, or reconnoitering."(8) Flag of truce.

11. "Deserters from the enemy, to be sent with a proper escort to the officer commanding outposts; who, ascertaining if he brings any information regarding his own post, will forward him to head-quarters." Deserters.

12. "Officers, soldiers, and camp-followers, not to pass the outposts, unless on duty, or with a pass from head-quarters." (Do. p. 230.) Passes.

Section 17.—Police in Cantonments.

1. *Guards.* "Besides the quarter and rear-guards of regiments, there is a guard to each bazar. A station or sudder bazar guard; (9) and where there is an European regiment, a small guard of Europeans, to seize any man who may create a disturbance in the bazar. The quarter-guard of the European regiment is the main-guard, that of the senior native corps, the line-guard. Each European regiment has also a barrack-guard. There are piquets of cavalry where there are cavalry; otherwise infantry piquets. Besides guards to protect public works, and establishments, and the offices of staff officers." Guards.

2. *Bazars.* "Bazars appointed to regiments,(10) under control of commanding officers, subject to control of officers commanding station and divisions." (G. O. G. G. 15th January, 1811.) Bazars of Regiments.

3. "*Registers* of bazar people (and alterations in) sent to magistrates within whose jurisdiction the station or corps is." (G. O. C. C. 27th May, 1811.) Registers.

4. "*Registered persons* not to go from one bazar to another without a regular discharge." (Vide Sec. 10, Reg. XX. A. D. 1810.)

5. "Public servants, once dimissed for dishonesty, not to be allowed to reside in the bazar, but to be turned out with disgrace." (G. O. C. C. 30th Sept. 1792.)

(8) Such persons, usually an officer, are blindfolded at the first piquet, &c. they come to, and the letter, &c. sent to the Commander-in-Chief or General, &c. commanding, by the General or field officer, &c. of the day.

(9) The Sudder Bazar establishment consists of one Kothwal, one Chuodhuree, one Jemadar Peon, one Naib Peon, and eight peons.

(10) Besides a Naick and four Sepoys, there are four Chokeedars in each Regimental Bazar, two of whom keep watch half the night, and the other the remainder. These men are paid by the residents in the Bazar.

Credit.

6. "*Credit* to be given in regimental bazar, on condition of paying for the same on the issue of pay for such months—daily rations to sepoys and camp-followers and grain for officers' cattle." (G. O. G. G. 15th Jan. 1811.)

"No European or native non-commissioned officer, soldier, or sepoy, to have credit, except in his own bazar—may buy in any sudder or other bazar with ready-money. The credit of regiments to be cried down, as is the custom of the British army." ("Onc oming to any place where the regiment, or detachment are to remain in quarters, cause proclamation to be made, that if the landlords or other inhabitants suffer the soldiers to contract debts, such debts will not be discharged. If they do, it will be at their own peril." (111th Article of War.) (G. O. C. C. 5th July, 1830.)

Quarterly Reports.

7. "Quarterly reports of the state of bazars of regiments, 1st April, 1st July, 1st October, and 1st January, statement of establishments and cattle." (G. O. C. C. 13th February, 1811, and 24th April, 1811.)

8. "Bazars of corps to be within rear guards, in all practicable cases; not to be blended with station bazars." (G. O. G. G. 15th Jan. 1811.)

Sudder bazars.

1. *Sudder or Station Bazars.* "The Cooly-bazar near Fort William exclusively under the police for the town of Calcutta." (Proceedings G. G. 25th August, 1800.)

Control commissariat.

2. "All military sudder bazars, at stations, are under the executive commissariat officer; subject to the control of general officers, &c. commanding divisions, stations, &c." (G. O. G. G. 1st January, 1824.) (11)

(11) *By G. O. G. G. 27th May,* 1824. The executive Commissariat officer has the supervision, charge, and control of the Bazar Police, under the general superintendence and instructions of commanding officers. *Chap.* 11, *Sections* 1 *to* 92, *and* 137 *to* 147, *Bengal Military Regulations,* 1817, RULE 1. In trivial offences, both parties being residents, to award summary punishments, by fines not exceeding two rupees, exposure in the stock not more than four hours, or confinement in Bazar Guard, not exceeding 24 hours. RULE 2. In cases of affrays or disturbances, where one party is a Sepoy, officer's servant, or (*Regimental and*) registered camp-follower (*Circular, No.* 10,780. *D. C. G. O. 4th April,* 1829; *at desire of Commander-in-Chief,*) to apply to the commanding officer of the cantonment, through the station staff, when the attendance of Sepoys or camp-followers is required; although the latter be not attached to the Sudder Bazar. The commanding officer on receipt, to direct the commanding officer of the regiment, &c. to whose corps or Bazar the party may belong, to send him to the *Commissariat officer.* If *he* thinks the party deserving of punishment, he will refer the case for adjustment, under the commanding officer's authority; as laid down in paras. 2 and 3 of G. O. G. G. 27th May, 1824. RULE 3. If a stranger or vagrant, to act as laid down in

3. "Bazar serjeants appointed." (G. O. V. P. 17th Sept. 1811.) Bazar serjts.

4. "Quarterly committees to report on the state of sudder bazars." (G. O. G. G. 15th January, 1811.) Quarterly committees.

5. "Limits of military bazars to be distinct from those of towns, which are under the civil authority." (Do.) Limits.

6. *Slaves.* "Prohibition against public servants under the British military authority sanctioning the purchase, or the sale of." (Res. M. B. 24th Sept. and G. O. C. C. 30th Sept. 1791.) "Any person importing slaves into the British territory. Fine not exceeding 200 rupees, and imprisonment for six months." Slaves. Not to be imported.

"Fine commutable, if not paid, to six months further imprisonment; and the slaves to be discharged, or sent back to their friends and connexions of the country from which they have been imported." (By Magistrates, Reg. X. of 1811, Secs. 3 and 4.) "All slaves who have been and may hereafter be, removed, (since Reg. X. of 1811,) by sea or land, for purposes of traffic, from any country, territory, or province, British or foreign, into any provinces now or hereafter dependent on the presidency of Fort William, (or from one province to another,) are hereby declared *free.* All convicted, after the promulgation of this regulation, of the purchase or sale of any man, woman, or child, so removed, before a magistrate, liable to imprisonment for six months, and to pay a fine to Government (according to their circumstances) not exceeding 200 Rupees; commutable as above to six months Free.

Rule 1, the Bazar resident being culpable. If of aggravated nature, or stranger appear obnoxious to punishment; either refer to the commanding officer, or to the magistrate. *Vagrants,* &c. lurking about without any ostensible means of subsistence; disorderly, ill-disposed, or suspected person, who can give no account of himself, detained for security, till satisfactorily disposed of. (Reg. XXII. of 1793, Sec. 10.) Making escape before regularly discharged, six months imprisonment with hard labor. Travelling about in large bodies, detained, or sent to magistrate (Reg. III. of 1821. Sec. 7.) Of notorious bad character, liable to detention, for substantial security, and case inquired into every three years. (Reg. VIII. of 1818. Secs. 4, 10; III. of 1819, Sec. 1.) Of notorious bad character, requiring security for good behaviour, to be detained for security, not exceeding twelve months, (Reg. VIII. of 1818. Sec. 81.)

Rule 5. Bazar people, if aggrieved by award of Commissariat Officer, may appeal, by petition, to commanding officer, through Brigade Major, &c.

Kothwal of Suddur Bazars to have their conduct investigated by a Court of Inquiry of experienced officers; if more investigation required, to be submitted to the General officer of the division; by him, if necessary, to the Commissary-General; or, in the last resort, to the Commander-in-Chief. Commissariat officer, in ordinary cases, will be responsible for his appearance, when required; but when requisite, a guard to be placed over the accused, in such situation as the Commissariat Officer may point out. The Kothwal to be supported in his authority." (*G. O. C. C. 27th September, 1831.*)

imprisonment, (Reg. X. of 1811,) at the expiration of former part of sentence." (A. D. 1832, Reg. III. 13th March, 1832.) (12)

No tax, duties, or dustooree, &c.

7. "No tax, (13) duty, or dustooree, to be levied in any station, or regimental bazar, on supplies." (G. O. G. G. 15th January, 1811, and G. O. C. C. 13th February, 1811.) "No duty tax, gratuity, or fee, to be levied or received on, nor passports or rowannah granted for, any goods or merchandize, either within, or passing to, or from, the dominions of Oude, and the ceded provinces." (Res. M. B. 17th

(12) Persons selling a man, woman, or child into slavery, though not removed from the place in which he or she were born, are triable and punishable under Reg. LIII. of 1803, Secs. 2, 7, (any person convicted of any crime not specifically provided for in the Regulations, or by any stated penalty in the Mahommedan law.) "If it should be proved that any person having stolen or inveigled away, by fraud and treachery, a child, and afterwards sold it to another, or that any person had compelled another (to consent, if male, under age (15 years) is not legal) into a state of slavery, by force or violence, the ruling power may order the emancipation of such slave." "Whenever a slave-girl has borne a child by her master, such slave, together with the child, becomes free, and the ruling power should sanction their *emancipation.* This is the law according to *Menu,* &c. &c." (*Sudder Dewanny Adawlut, 29th March,* 1809. *Macnaghten's Principles and Precedents of Hindu Law,* vol. ii. pp. 275-6.)

"Any person enticing, and taking away, or causing to be enticed, and taken away, a married woman living under the protection of her husband, or of any person having the care of her in his behalf, for the purpose of rendering her a prostitute, or concubine, *or otherwise disposing of her in an unlawful manner,* or enticing or taking away an unmarried female, under the age of 15, living with her parents or guardians, or any person acting in their behalf, for the purpose of rendering such unmarried female minor, a prostitute or concubine, *or otherwise disposing of her in an unlawful manner,* are punishable under Reg. VII. of 1819, Section 2, by the magistrate, (six months' imprisonment; fine not exceeding 200 Rupees, commutable, if not paid, to further imprisonment, not exceeding six months.) In aggravated, (and in both) cases, by the commissioner, under Reg. XVII. of 1817, Section 6, (by a sentence not exceeding 39 stripes of the ratan, and imprisonment, with hard labor, for seven years.")

The words, "*or otherwise disposing of her in an unlawful manner,*" applies to slavery; for, by the *Mohammedan law,* "the sale of a *free-man* is void. To deposit as a pledge a free-man is an invalid act." (Macnaghten's Principles and Precedents, M. L. p. 325.) "Neither of the parents is permited to sell such (free child, and whoever purchased it, the purchase is null and void; as mankind is originally free, and is not a fit subject of slavery, *except in a case of Isteela, which obtains when a Mohammedan ruler subdues the dominion of infidels, and makes captives of its inhabitants both male and female.*" (Do. p. 326) Section 5, GEORGE IV. chap. 113, which consolidates all the laws, regarding slavery, and importation of slaves. (*Blackstone,* vol. i. 425.)

(13) "Prohibited in all situations where troops are, or may be, stationed, whether in camp or cantonments, within, or beyond the British frontier." (*G. O. G. G. 5th April,* 1825.)

January, 1806,) an exemption of duties in Oude, for supplies, &c. for troops there. G. O. G. G. 6th Oct. 1787.) (14)

Spirituous liquor. 1. *Spirituous Liquor.* "A contractor is allowed to reside either in the sudder bazars, or in the vicinity of cantonment, under a license from the collector, &c. (the distance being settled by him and the commanding officer, or referred to Board of Revenue,) and a penalty bond for 500 Rupees if he breaks the terms of the contract." (15) See Ext. G. O. G. G. 5th March, 1807. Penalty bond.

No unlicensed still. 2. "Any person attempting to evade the rules of Regulation X. of 1813, (sudder distilleries) by using stills within the prohibited limits, or bringing in spirits from other places, or convey spirits away without a proper pass, or exceed the quantity specified in such pass; *Fine* not exceeding 500 Rupees, (half fine to informer—if not, fined 10 Rupees.) If not paid, imprisonment not exceeding six months in the Dewannee Jail." (Regulation X. of 1813, Secs. 9, 21.) Pass for liquor.

Drugs or opium. 3. "Any person convicted of manufacturing or selling spirituous liquors, tawry, patchwhye, and intoxicating drugs or opium, without a license." (Do.)

4. "Zemindars, &c. conniving at establishments of shops for manufacture or sale of liquor or intoxicating drugs. Fine to Government proportionate to the offence." (Do. Sec. 30.)

(14) "Buneeahs of Regimental or Bn. Bazars exempted from the payment of toll at public ferries, on the production of certificates from commanding officers." (G. O. G. G. 29th May, 1819.) And by G. O. V. P. C. 28th October, 1817, 1, military officers with their servants, and native soldiers on leave; 2, servants and baggage of an officer not present with it—supplies in transit for officers and their cattle when sent to graze; 3, carriage, cattle, and porters, with treasure or public property, &c.—materials for *buildings* (except by *contract*); 4, commissariat cattle; 5, public cattle sent to graze, &c.; 6, public grass-cutters. Officers, when not present, to give their servants certificates of name or names of servants, and description of cattle, carriages, &c. If not, servants will be obliged to pay toll."

(15) No European or native shop-keeper or merchant can sell less than nine quart bottles of spirituous liquor, wine, or beer, and Europeans and native shop-keepers, &c. enter into a penal Bond, amounting to 400 Rupees, not to sell spirituous liquors to the European soldiery; and it is declared that any European doing so will invariably be sent out of the country. *(G. O. G. G. 14th Nov. 1822, A. G. Circular Letter, No. 3425, 26th Feb. 1820.)* In the case of the native contractor, his lease on due proof should be forwarded to the civil authority (collector), within whose jurisdiction the station is. This should be done by a trial by Court Martial (if the party resides within the limits of the station, &c.)

The commissariat executive officer has the power to take security to the amount of 400 Rupees, in the case of watch-makers residing in the sudder bazar. It should be applied to silver-smiths and others who may have charge of articles of value. If they cannot give good security, they are not allowed to reside in the bazar. The commissariat officer has only charge of the sudder bazar.

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5. "The retail of spirituous liquor, wines, or fermented liquors of any kind, imported by sea or otherwise (except under a license), or any British born subject, retailing spirits or wines of any kind, in any place (unless more than 10 miles from the town of Calcutta), without a license, to forfeit 500 Rupees." (Regulation VII. of 1824, Sec. 2.)

Police in Cantonments vested in Commanding Officers.

Police in cantonments.

1. "The support of the police, and the maintenance of the peace within the limits of cantonments and military bazars (16), are vested in the commanding officer.

2. "To prevent the commission of thefts, robberies, murders, and other public crimes, within the limits of cantonments, and military bazars: and take measure to discover and apprehend the persons guilty of them." (G. O. G. G. 8th July, 1809, Regulation III. A. D. 1809.)

Religious buildings.

3. "*Mosques*, temples, or other buildings of a religious description, not to be occupied as dwelling houses; unless with the consent of the natives." (Ext. Let. Dy. A. G. 24th April, 1806.)

No cultivation in cantonment.

4. "*Cultivation.* Ground intended for the exercise of troops not to be cultivated." (G. O. G. G. 19th August, 1824.) (17)

5. "*Ground occupied by officers' gardens*, resumable if required for public purposes." (Proc. G. G. 25th June, 1801.) (18)

Houses not to be occupied by civil persons.

6. *Premises and dwellings of officers.* "No bungalows or quarters to be sold to, or occupied by, any person not belonging to the army. Individuals, not officers, purchasing, must remove the materials; (19) as the ground is exclusively for the use of the troops;" (i. e. if the ground be required for public purposes;) "they are allowed to purchase, but must sell to any officer. A Committee of valuation is appointed." (20) (G. O. G. G. 25th September, 1807.)

(16) The executive commissariat officer of sudder bazar; see Note 11.

(17) "The prohibition to the letting of cantonment lands, applicable to all stations where British troops are, or may be, stationed, whether in camp or cantonments, within or beyond the British frontier." (*G. O. G. G. 5th April*, 1825.)

(18) This alludes to gardens not within their own compound, but in other places within the limits of cantonments.

(19) "To dispose of, or take away the materials, and their property of every description; and no *private* landed property is to be included within the limits of cantonments in which the whole of the ground belongs to Government." (*Bombay Castle, No.* 411, *G. O. 30th October*, 1832.)

(20) "To consist of the judge and magistrate and collector of the district, the commanding officer of the station or cantonment, and any other military officer whom the commanding officer may select." (*G. O. G. G. 25th January*, 1813.)

7. "*Pounding of Cattle.* Stray cattle may be pounded if within the limits of cantonments. The owners of cattle to be charged for the feed; of each bullock, cow, tattoo, or other animal so pounded." (By Bazar Serjeants, Quarter-Master Serjeants, or other authorized persons.) (21) Pounding cattle.

The Committee of Arbitration judge of the value of the building by its relative value, compared with others. The seller puts a price on it, and instances have been known of the Committee awarding a larger sum. The person wishing to buy is not bound to purchase, unless he agrees to abide by the decision; but as the proprietor is allowed to appeal to Government through the Quarter-Master General of the army, if he objects to the price fixed by it, I presume the other party may also. The *proceedings* should be like those of any other Committee, (facts are recorded;) and they are lodged in the Brigade Major's or senior staff officer's office, at the station. All the members sign, and a majority decide. A member may record his dissent, which may influence an *appeal.* When Government ordered a Committee of Valuation, in the case of a civil servant, who asked 4,000 Rupees as the price of a house he wished to sell for *a kucheree,* the Government ordered a committee, by which 6,000 Rupees were awarded; and sanctioned by Government.

It appears by G. O. G. G. 28th Sept. 1807, (in force except as to the Committee being composed of civil and military instead of military officers *only,)* that a staff officer is obliged to sell to his successor at *a fair valuation;* but this only applies to cases where there are regular staff lines. Where a staff officer, at Meerut, (where there are regular lines,) purchased a bungalow in the lines of His Majesty's 16th Lancers, in 1826, the commanding officer of it obliged the staff officer to sell it to him; and another staff officer was similarly turned out of his bungalow, but obtained a spot of ground to build on. By the Order of 1807, "*expensive additions or improvements,* are not to become burthensome to the purchaser;" a man pays for his *luxury,* or *caprice!* This order also calls the attention of commanding officers to G. O. G. G. in C. of April, 1801.

"That no bungalows or quarters at any cantonment be allowed to be sold or *occupied* by any person who does *not belong to the army.* If they purchase, they must remove the materials; as the ground is to be kept for the use of the troops."

"Officers on quitting the station, are to sell or *rent* their quarters to the officers who may relieve them, at a *moderate rate.*" *(Henley, p.* 404-5). By which it would seem that no one has a right to put on any rent he likes, for though the order of 1813, applies to the *disposal* (or *sale*) of bungalows, still the order of 1801 is not cancelled. Where there are no regular lines of bungalows for corps, an officer may buy or rent elsewhere: but, if there be no other bungalow to rent, it would be hard, indeed, not to allow of a reference to a Committee in the case of a *poor* man,) When the *rich* who can *buy,* can *demand* one who can only *rent. Natives* at times have bought bungalows for 2000 Rupees, and charged 70 Rupees per mensem, as *rent!* There should be some *maximum* fixed, for thatched and pukka buildings, for it is hard that a young officer, who cannot afford to buy, should be at the *mercy* of *an avaricious usurer;* and, why should protection be given to the owner, not a military person, at the expense of the poor subaltern; when the tenor of the Order of 1807, goes to prevent *expensive improvements or additions,* becoming burthensome to the purchaser!"

"Cattle pounded for seven days, if not claimed, after due notice, to be sold by public auction, and proceeds paid to the late proprietors; deducting expense of keep." (If any cattle belong to persons under the civil power, to leave the magistrate to settle any contested point between the owners and Bazar Serjeant, &c.) (G. O. G. G. 25th January, 1813.)

Fire. 8. *Fire.* "Commanding officers to take precautionary (22) measures to prevent fires." (G. O. C. C. 7th June, 1816.)

9. *Regulations in Cantonments* submitted by commanding officers to the Quarter-Master General of the army, for the approval of the Commander-in-Chief, by whom they are submitted to Government." (G. O. G. G. 25th January, 1813.)

SECTION 18.—REGULATIONS FOR THE TRIAL AND PUNISHMENT OF PERSONS NOT ENLISTED AS SOLDIERS, BUT BELONGING TO PUBLIC ESTABLISHMENTS, AND CAMP-FOLLOWERS, &c.

Reg. XX. A. D. 1810. SECTION 1.—"By the King's, (23) and Company's Articles of War, (24) provision is made for the trial and punishment of persons not enlisted soldiers. The following regulations apply to such persons, in time of *peace*, when in *Garrisons, Cantonments, &c.*" (25)

Not enlisted soldiers.

Receiving public pay. SECTION 2.—"All persons serving with any part of the army, and receiving public pay, (lascars, magazine-men, classies of magazines, or any other departments or establishments, native doctors, (26)

(21) Commanding officers authorized to levy a *fine*, upon each, of 2 Annas a day, (including all charges for their feed.) (*G. O. C. C. 8th Oct.* 1817.) At most stations there is a local regulation, directing the seizure of all animals straying on the parade or about the cantonment, without any one to take care of them; and for the non-levy of, and return of the 2 Annas, if the animal has not been fed, information, by beat of *Tom-tom*, is given through the bazars; and, if remaining unclaimed for 10 days in the pound, sold by public auction. Such local regulations, when made, are submitted to the Quarter-Master General of the army. *Dogs*, 2 Annas, for killing each. G. O. G. G. 17th February, 1821, Commis. Reg. p. 43. Executive Commissariat Officer pays.

(22) Pots, kept filled, constantly, with water, are ranged in the lines of huts of each troop, or company, &c. The officer of the day should ascertain that the order is obeyed; and report any neglect of it. No man is allowed to cook, during storms of wind, in his huts, and the exterior must always be covered with cow-dung, and the chupper over the fire place is covered with cow-dung plaster. See *Fire-Engines*, note 5, *ante*.

(23) Article of War, 140.

(24) 1825, Sec. 17, Article 1, 3.

(25) By the 22nd Article, Sec. 11, of the Native Articles of War, they were before triable when in the field.

(26) Must not be sentenced to *corporal punishment*; may be dismissed by a Regimental Court Martial. G. O. C. C. 24th May, 1832.

writers, bhistees, pukallies, syces, grass-cutters, mahouts, suwars, or other subordinate servants attached to public cattle, bildars, artificers, (27) or in any other capacity) shall (if borne on any fixed establishment) be subject to trial for all breach of their respective duties, and for all disorders and neglects to the prejudice of good order, and of the local regulations of cantonments, garrisons, stations, or other places, where troops are serving." (28)

Punishment.

SECTION 3.—"The punishment of the persons described in Sec. 2, is not to exceed that laid down by the King's Article of War, 140, and by the Company's Article 2nd, of Section 15, unless in the field." (29)

Menial servants.

SECTION 4.—"Menial servants of officers within any cantonment, garrison, or military station, or military bazar, though not receiving public pay, are amenable to the regulations of cantonment, &c. and shall be tried for any breach by a Native Court Martial."

Limits of cantonments.

SECTION 5.—"The limits of cantonments, and garrisons, and military bazars, of troops not less than half a battalion, to be marked out by the commanding officer in concert with the magistrate. A report to be framed jointly with the magistrate, and submitted by the commanding officer to Government, through the Commander-in-Chief; (30) the magistrate to make his remarks. Plans to be prepared, after approval of the limits by Government."

Plans of cantonments.

SECTION 6.—Plans in *quadruplicate*, signed by commanding officer and magistrate: one copy head-quarters of station, another with the magistrate; one for the Commander-in-Chief, and one for Government."

Register of bazar people.

Carrying on trade, &c.

SECTION 7.—"The names of all persons having houses, shops, or other buildings or fixed places, within the limits of the garrison, cantonment, or station, as in the plans, carrying on trade, or who supply or serve the troops, shall be entered into a Register to be kept in

(27) Stoppages are made from work-people and artificers, who absent themselves from their duty, on frivolous pretences; the amount to be applied to the hire of extra-workmen, and to be duly accounted for. This is done under Regulations from the Military Board. *(G. O. G. G. 15th July, 1824.)*

(28) By Regulation III. A. D. 1809, (8th July,) Sec. 5, the Police is vested in the commanding officers of all cantonments in which any body of troops, not being less than half a battalion, is quartered; whether the judge and magistrate be resident there or not. See Notes 41, 42.

(29) When they would be tried for murder, &c. by General Court Martial, and are now, in cantonments not in the Company's Provinces.

(30) Through Quarter-Master General of the army, to whom all applications are made relative to cantonments.

Where kept. offices of Brigade Majors, (31) or other station staff, and open for inspection at all reasonable hours. (32) The names to be in English, and in the language and character commonly used in the district; the occupation and place of residence opposite each name, and date of registration." (Copies and alterations sent to magistrates.)

Not registered against consent. SECTION 8.—"No person to be registered in station bazars against his consent; if so registered, entitled to discharge from such registry. Entitled to privileges of registry so long as they carry on trade, or supply or serve the troops, in some house, shop, or fixed place, within such bazar. Subject to the regulations made by commanding officers or other competent authority, for the maintenance of good order and fair dealing; (33) and liable to be tried by a Native Court Martial, for any breach thereof." (Vide Sec. 13, *infra.*)

Register regimental bazars. SECTION 9.—"The names of persons in regimental bazars to be registered the same as in station bazars. (Vide Sec. 7 *ante.*) The Register to be kept at the head-quarters." (Quarter-Master.)

No one registered against his consent. SECTION 10.—"No person to be registered without his consent; if so registered, entitled to discharge, at any time, except the corps be

(31) Executive commissariat officer.

(32) Between 10 A. M. and 4 P. M. usually.

(33) Punishable if they sell by short weights, or measures. There should always be a Regulation in every cantonment to bring these offences under Sec. 12. of this regulation; as well as for *breach of contract.* By Regulation VII. of 1819, Sec. 5, "Any person who may voluntarily engage to serve as a workman, of any description, for a stipulated term, and who without good and sufficient cause shall wilfully quit the service so engaged for, before the expiration of the term so agreed upon; or any person who may voluntarily contract for the performance of any specified work, and who without good and sufficient cause shall wilfully neglect to perform the work so contracted for; to be imprisoned, not exceeding one month: if it appear just and proper, to be required to complete the stipulated term of service (or perform the work contracted for), and neglect to comply with such requisition, to be further imprisoned not exceeding two months. These cases should be punished by the civil authority, as, under Sec. 13, *(infra,)* the punishment is less. Not only should these be cantonment regulations, but offenders should be punished even more severely by a military Court than by Regulation VII. of 1819. Every person residing in a bazar, should be declared amenable to Regulation XX. A. D. 1810, by the fact of residence, or, having a shop in the bazar: for, now, their not being registered, strictly speaking, prevents their being tried and punished under it. (See note 48.) It involves the trouble of sending such persons to the magistrate, (see Section 17, *infra;*) for even a breach of the peace in cantonment, (see Section 15, *ante,*) and allows an individual to derive profit by the sale of his goods, and to possess an advantage over the registered person, by claiming exemption from trial by a military Court!

on actual service, or in immediate prospect of marching, when the commanding officer will use his discretion, while the emergency lasts."

Or privilege of, unless carry on trade, &c.

SECTION 11.—"No person entitled to the privilege of registry, except they ordinarily carry on the trade, or employment, in *respect of* which they are registered."

Trial for breaches of good order.

SECTION 12.—"Liable to trial for breaches of good order, and fair dealing, (34) (and for the prompt and efficient execution of the services of their occupation,) and for such regulations established by commanding officers, or other competent authority, by a Native Court Martial."

Punishment.

SECTION 13.—"No court martial, for the breach of any local regulation, on persons attached to bazars of corps, or station bazars, or on any officer's servant, shall inflict more than 50 lashes, with a cat-o'nine tails, or 14 days confinement; or in aggravated cases, both punishments. Persons above the condition of petty dealers, menial servants or workmen, not liable to punishment, in the first instance, for breach of local regulations, but be sentenced to pay a fine to Government, in no case exceeding 100 Sa. Rs. to be levied, if not forthwith paid, under a written order by the commanding officer, grounded on the sentence of the court, by seizure and public sale of such goods of the offender, as may be found within the limits of the garrison, cantonment, or bazar; and if sufficient goods be not found, may be arrested by a written order of the commanding officer, and confined for one month, unless the fine be sooner paid. In case of a second offence, *any* person may be sentenced to corporal punishment; (35) the same as petty-dealers, &c."

Some by fines

Not paid.

Goods seized.

Claim to exemption.

SECTION 14.—"On any claim to exemption from corporal punishment, awarded by a court, commanding officer, upon appeal to his satisfaction, shall commute the punishment for a fine not exceeding 100 Sa. Rs. to be levied in the same manner as if awarded by the court." (See Section 13, as to second offence, and fine.)

Assaults, affrays, breach of peace.

Punishment.

SECTION 15.—"Persons mentioned in Sec. 2, any menial servant of an officer or persons registered in station or suddur bazars, (36) charged with any inconsiderable assault, or affray, or other act, immediately tending to a breach of the peace or good order of any garrison, cantonment, or bazar, (36) shall be tried by a Native Court

(34) See Note 33.

(35) If respectability of character in the first instance saves the infliction of corporal punishment; it should, for the same reason, for the second offence; might be again fined; an increased fine, and discharged. Chuodhurees, Moonshees, Shroffs, and respectable native shop-keepers, are considered exempt from corporal punishment. Persons named in Sec. 2, *ante*, for breaches of *duty* are punishable under Sec. 3.

(36) See last part of Notes 33 and 41.

If in receipt of public pay. Martial, and punished by imprisonment, not exceeding 20 days, or a fine, not exceeding 50 Sa. Rs. or to 50 lashes with a cat-o'nine tails. If persons mentioned in Sec. 2, for a military offence so charged, to be punished as laid down in Sec. 3." (Vide Sections 2 and 3, *ante.*)

Petty thefts without violence or outrage. SECTION 16.—"Any retainer of the army, mentioned in Sec. 2, (see *ante,*) or any menial servant of an officer, or any person attached to and registered in the sudder bazar, charged with having committed a petty theft, (without violence or outrage, not exceeding in value Rupees 100,) within the limits of a cantonment or bazar, shall be tried by a Native Court Martial, the sentences of which shall not exceed 100 lashes with a cat-o'nine tails, or imprisonment not longer than one month." (37)

Punishment.

If not by a retained or registered person. SECTION 17.—"If the offences mentioned in Sections 15 and 16, (see *ante*) be committed within the limits of a garrison, cantonment, or military bazar, by any person not a retainer of the army, or menial servant of an officer, *or registered in any bazar:* the commanding officer shall arrest the offender, if found within the limits of cantonments, &c. &c. and send him to the magistrate; who, on conviction, shall, as in other cases of petty offences, punish him under the existing regulations." (38)

By magistrate.

Deliver over to. SECTION 18.—"In cases of crimes not cognizable under this regulation, by a Court Martial, committed within the limits of garrison, cantonments, or military bazars: the offender, of whatever description, if found within the limits, shall be arrested by the commanding officer, and delivered over to the magistrate."

Process of arrest, civil or criminal. SECTION 19.—"A process of *Arrest, Civil* or *Criminal,* within the limits of any garrison, cantonment, military station, or military bazar *(except process of the Supreme Court),* is, in the first instance, to be carried to the commanding officer, or, if absent, to the senior officer present in the garrison, &c.; which commanding officer shall back the same with his signature, and forthwith use his utmost endeavours to cause the person or persons named in such process to be discovered,

(37) The exemption from corporal punishment not in such cases, (but see Note 26.) should always be ordered, by commanding officer, to be turned out of cantonments.

(38) See last part of Note 33. *Affrays,* &c. under Regulation IX. of 1807, six months imprisonment, with a fine of 200 Rupees, commutable, if not paid, to six months more. (See also, A. D. 1828, Regulations V. and VIII. See Note 11, as to *Vagrants. Thefts* of 50 to 300 Rupees, imprisonment, with hard labor not exceeding two years, and to corporal punishment not exceeding 30 ratans. (Regulation XII. of 1818, *Sec.* 2). If above 300 Rupees, liable to not exceeding 39 stripes of the ratan, and to imprisonment not exceeding seven years. (Regulation XVII. of 1817, *Sec.* 8.) See Note 48.

and, if within the limits, &c. to be arrested and delivered, according to the exigency of the process, to the civil officer charged with the execution thereof; (39) but nothing is to prevent the service by the civil officer in the usual way of *summonses, subpœnas,* or other processes of mere citation, without arrest."

Or summons, subpœna.

SECTION 20.—"Relates to those garrisons, cantonments, military stations, or military bazars (vide Sections 5 and 6), occupied at the time, and the plans of which had been approved of by Government. This regulation does not extend to Oude (except to persons registered in bazars, or of departments, &c. within the limits of cantonments, &c., nor to the garrison of Fort William." (40)

To what garrisons and cantonments.

SECTION 21.—"The charge of the police over persons registered as attached to bazars of corps, is vested to the extent specified in Regulation III. of 1809, (41) and in this regulation, in the commanding officer of such corps (as long as *boná fide* carrying on the occupation for which registered)—all such petty officers specified in this regulation (Sections 9 to 20) shall be tried and punished by a Court Martial (*Native*) (Sections 4, 8, 15, 16), under the same rules and restrictions, as to the mode and measure of punishment, as if committed by persons, &c. in sudder bazars;—provided, if committed above one kos (42)

Police regimental bazars in commanding officers.

If out of limits of cantonments or camp.

(39) See Articles of War, 34, 38, 109; and Sec. 9, Articles 1, 2. Company's Articles of War. *Native* Articles, Sec. 8, Art. 1, 2.

(40) The Police is vested in the Town Major. G. O. G. G. 14th Oct. 1823. A military officer, appointed superintendent of the Calcutta police. G. O. V. P. 10th December, 1830.

(41) Sec. 2, cl. 1, "To adopt measures to prevent the commission of thefts, robberies, murders, and other public crimes within the limits of cantonments and Military Bazars; and for the discovery and apprehension of persons guilty of them." *Cl.* 2, "Assaults, affrays, *or other offences of inferior magnitude,*" which were *then* only cognizable if apprehended in the actual commission of them, but *now*, whether apprehended in the fact or *not*. Hence offences, *other offences* than mere breaches of local regulations, are *now* triable by Military Courts, such as *dishonesty, unfair dealing*, &c. and any offences not specified as cognizable by the Civil Courts, provided the punishment does not exceed that laid down in Sections 13 and 15, *ante*. Sec. 3, Regulation III. 1809, cl. gives an appeal to the party aggrieved to the magistrate, in cases of excess of jurisdiction on the part of commanding officers. See Note 33.

(42) *Kos* is a very indefinite term. It would be better to say two miles, and the limits should be marked by pillars. On the Bombay establishment, all crimes, civil or military, committed by native soldiers and camp-followers, (man, woman, or child,) within one mile of the limits of cantonment, are triable by a General Court Martial. It would be better if all native officers, non-commissioned officers, soldiers, and camp-followers were tried by a General Court Martial, in all cases, whether within or beyond the provinces. All European officers and soldiers and their wives are tried for

from the station or camp, (and the offender is taken in the fact,) the magistrate shall have concurrent jurisdiction, and may proceed against the offender, as in other cases, or, at his discretion, remit him to be tried by the commanding officer, by a Court Martial." (Sections 15, 16.)

Actions of debt.

SECTION 22.—" Actions of debt and all personal actions against native officers, soldiers, retainers, of the description mentioned in Section 2 (*ante*), persons registered as attached to sudder bazars, or bazars of corps, or menial servants of officers, shall be cognizable before a military court, and not elsewhere; provided the value in question does not exceed Sa. Rs. 200, (43) and the defendant was a person of the description above-mentioned when the cause of action arose. The court to be composed, in all practicable cases, of 5, and not less than 3, Native officers, the senior to preside—superintended by an European officer: (44) to be convened monthly by commanding officer of stations and corps, some convenient day before the issue of pay for each month. The court to award upon finding any debt or damage due either execution generally, or to direct the whole or any part thereof to be stopped and paid over to the creditor out of any pay or public money coming to the debtor, either in the current or any future month.

Not exceeding 200 Sa. Rs. in the Company's provinces.

Awards by instalments.

If not paid, execution generally.

Goods seized and sold.

If execution generally is awarded, the debt, if not forthwith paid, to be levied by seizure and public sale of the debtor's goods, as may be found within the limits of the garrison, cantonment or military bazar, under a written order of the commanding officer, grounded upon the judgment of the court. If sufficient goods are not found within the limits, the debtor to be arrested by like order of the commanding officer, and imprisoned in some convenient place of confinement within

civil crimes by a General Court Martial, if committed beyond 120 miles from Fort William, Fort St. George, and Bombay. (*Sec.* 2, 4 *Geo.* VI. *c.* 81.) At present native soldiers are tried in the same division, partly by the military and partly by the civil authorities. The reason assigned for trying *European* equally applies to *Native* soldiers, the distance to which (See p. 11,) they were at times sent, and the inconvenience of many witnesses being sent away from corps. At present, on the S. E. Frontier (Assam, &c.); at the stations in the Saugor division; the Mhow, Neemuch, and Nusseerabad field forces; in Oude; and at Loodianah, at which nearly half the army is stationed, native officers, soldiers, and camp-followers are tried by Native General Courts Martial for murder, &c. &c.

(43) Actions to *any amount* are cognizable beyond the British territories. (*G. O. G. G.* 14*th Oct.* 1824.)

(44) If the claim (beyond the British territories) be for more than 1000 rupees, *European* officers, field-officer president, and D. J. A. G. If exceeding 200 rupees, native officers, and Captain, Supg. officer. (*G. O. V. P. C.* 29*th Oct.* 1832.)

the limits of the cantonment, &c. for two months, unless the debt be sooner paid, and his goods, if found within the limits at any future time, shall be liable to be seized and sold in satisfaction of the debt, under a written order of the commanding officer." (45) See Section 24.

Any thereafter found if debt not paid.

SECTION 23.—" Courts Martial and other military courts authorized by this regulation to be held by officers commanding stations, garrisons, or detachments, as the case may be; and when single corps are employed in separate or detached situations, by the officer commanding the corps so detached."(46)

Courts martial and courts of requests held by commanding officer of station.

SECTION 24.—" No process of arrest before judgment, shall issue from any civil court in any action against a person residing or carrying on any trade or occupation, relating to the service or supply of the troops, at any house, shop, or fixed places within the precincts of a garrison, cantonment, or military bazar, unless it be averred in the plaint, that the cause of action exceeds 200 Sa. Rs. (47) or that the defendant, though resident or carrying on such trade or occupation within the military limits, is not registered (48), or though registered, has not within three months preceding, *bonâ fide* exercised his registered

If exceeding 200 Rs.

Or not registered.

Or carried on trade three months before action.

(45) For further explanation, see Native Courts of Requests, Chapter V. *post.* This Section and Sections 24, 25, 26, are merely given here to connect the whole of the regulation to which it belongs, not being so arranged in any Military code of Regulations.

(46) Where there are two or more regiments at a station, the officer commanding the station orders the assembly of the above Courts Martial or Courts of Requests; and not each officer commanding a corps, though the complaints belong to the same regiment; and so if there were two detachments at the same station, consisting of half a regiment each: but, where there is a single corps at a station, or detachment of half a regiment, the commanding officer of such single regiment &c. would order the said courts.

It is said by authority that unless there be half a battalion (see note 28, *ante*) these Courts of Requests cannot be held; if so, of course not the courts to try breaches of local regulations, &c. The fact is, that when the regulation was framed, it was never contemplated that any smaller force might be stationed at any place; whereas there are fixed detachments in and out of the provinces, consisting of four companies, which may be reduced to detachments from them; some of only two companies, as well as detached parties of two or three companies on a march. It should therefore be directed, that all such courts may be held whenever there can be assembled the legal number of officers to hold them.

(47) This only applies to the Company's provinces.

(48) See Sec. 17, *(ante)* and last part of note 33; residence should make all persons amenable in all cases, whether by Court Martial, or by the Court of Requests, provided that, when the offence was committed or the cause of action arose, the party was then resident. Every man should be compelled to be registered, or

Indorsement. occupation. In such cases the judge issuing the process, shall indorse upon it; "*cause of action above 200 Sa. Rs.*" or, "*defendant not registered,*" or, "*defendant not entitled to privilege of registry;*" and shall sign the indorsement. All processes so indorsed, if the defendant be within the limits of the garrison, cantonment, or military bazar, must be delivered, in the first instance, to the commanding officer, and be executed through him as in other cases, (*see Section* 19 *above.*) If the defendant be found without the limits, he may be arrested by the civil officer, on process so indorsed. If plaintiff fail to prove the purport of the indorsement, he shall be non-suited, with costs."

Delivered to commanding officer.

Defendant illegally arrested by civil court, if under 200 Rs. &c.

SECTION 25.—The same as to registered persons of regimental bazars (no person to be arrested for any sum unless it exceeds 200 Sa. Rs. by the civil court, the judge to indorse, &c. as in Section 24. The plaintiff if he does not prove the averment of the indorsement, to be non-suited, with costs). If arrested without such indorsement, under any civil process, the commanding officer (being satisfied on inquiry as to defendant's registry, &c.) shall make out and sign a certificate in the following form:

Certificate by commanding officer, if arrest be illegal.

Certificate. "I, A. B. commanding officer of——(49), do hereby certify, that———of——was registered on the—day of——in the year——, as a person attached to the bazar of the corps, in the occupation of a———, and that he did at the time of his being arrested on the——day of———last, actually and *bonâ fide* follow that occupation, as a person attached to the bazar of the corps within the space allotted or ordinarily used for the bazar."

The judge releases.

The Judge—"Upon the production of such certificate, shall cause the same to be recorded, and make out an order for the release of the person from confinement. The plaintiff may proceed to action, but must prove the averment on the indorsement; or be non-suited, with costs."

Plaintiff's action.

Proprietors of land and houses, in bazars not to be dispossessed.

SECTION 26.—"Commanding officers not to dispossess proprietors of land or houses within the limits of military bazars, although such persons shall refuse to be registered, or shall have lost or forfeited or resigned their privilege of registry (50). If the ground allotted

declared to be amenable from the fact of residence; as now, a merchant registered might be compelled to prosecute a non-registered merchant for 200 rupees in the civil court, and if he has a shop in the bazar, though he may have a dwelling-house in the town out of the limits of the cantonments, claim exemption! In such case the shop should be registered, and he thereby become amenable.

(49) The station, see note 46.

(50) This was proper to secure the interest of those possessing houses before the regulation passed, but should not now be in force. See Note 48.

to the bazar is the property of Government, and the occupation by the person has been declared by Government merely permissive, commanding officer may make such general regulations, as he may think fit, (51) (subject to the approbation of the G. G. in C.) as to the tenure or occupation of houses, shops, or other fixed places upon such Government ground, which regulations shall be in writing, and after approved of by Government be published in station orders, with a translation in the language commonly used in the district. Not to be in force till 14 days after publication within the limits of the station bazar." Rules if on Government ground.

SECTION 19.—CIVIL AND MILITARY AUTHORITIES.

1.—"Officers not to address judges or magistrates, &c. publicly or privately on cases pending in the civil courts, regarding their servants." Officers not to write to civil authorities direct.

2.—"Any officer having any complaint to prefer to any judge, magistrate, &c. (in which he is personally interested) to write officially." (*G. O. V. P.* 26*th Nov.* 1805.) (52)

3.—"Commanding officers not to allow magistrates, &c. to be troubled with unnecessary applications." (*G. O. C. C.* 12*th January*, 1806).

4.—"Sepoys, &c. proceeding on leave not to be furnished by officers, &c. with letters to judges or magistrates, &c." (*Proc. G. G. Jud. Dept.* 27*th Sept.* 1804.) No letters with sepoys' petitions, &c.

5.—"Difference between civil and military authorities to be settled by the Government." (*G. O.* 26*th Jany.* 1787.)

6.—"Private individuals, whether European or native, (unless allowed by Government) are not to dress their servants in the uniform of soldiers." (Reg. XI. A. D. 1806, Sec. 9, cl. 2.) "Natives not soldiers, prohibited from wearing the uniform of soldiers, cl. 3. Public servants of officers are not to be dressed as soldiers, cl. 4. Native soldiers (except Subadars, Jemadars, and Serangs) going on leave, not to wear their uniform, cl. 5. Commanding officers of stations, and detachments, zillah and city magistrates, may take away such military dress. If a soldier, send him to his corps with a written complaint. The local police officers may apprehend such persons, cl. 6. This extends to all the Company's provinces." Servants not to be dressed in uniform. Nor sepoys on leave.

7.—"No servants except those of public establishments, to wear badges (or breast-plates); may be deprived of them by magistrates; Police officers may apprehend them." Cl. 8. No badges worn except by public servants.

(51) Submitted through the Quarter-Master-General of the army.

(52) Should be through their commanding officer.

Troops required by civil authorities.

8.—" Magistrates, &c. requiring troops to aid the civil power, to apply, by writing, to the officer commanding the division, district, station, post, &c. and state the service to be performed—the commanding officer to judge of the strength of the force to be sent. The responsibility rests with the magistrate calling for such aid. The commanding officer cannot refuse to furnish troops. The commanding officer to report to the Quarter-Master-General of the army." (53) (Reg. XI. A. D. 1806, Sections 13, 14, cl. 1, 2, 3.

Magistrates &c. to inform commanding officer of armed bodies moving in district.

Do. police daroghas, &c.

9.—" Judges and magistrates to inform commanding officers of stations of the arrival in the district of any persons, (subjects of foreign state,) coming into their districts with armed followers" (and number). *(Procgs. G. G. 6th June*, 1808, *28th May*, 1810.) " Darogahs and police officers at a distance from the magistrate, &c. but near any cantonment, &c. to give similar notice to the officer commanding the nearest post." *(Procgs. V. P. 18th June*, 1811.)

Labourers.

10.—" The civil power has no authority to compel labourers to work even for public works." (*Let. M. S. G. 11th December*, 1809.) (54)

Magistrate to deliver up European soldiers apprehended of crime committed beyond 120 mls. from Ft. Wm. to military.

11.—" *Magistrates* to deliver over to commanding officers of corps any *European* British subjects, attached to the army, (as described in Sections 45 and 60 of 4 George IV. c. 81,) when apprehended within certain limits (55) on charges of a criminal nature. And, on application, to assist commanding officers in the apprehension of such persons; and likewise to enforce processes for attendance of witnesses. Not to inquire into criminal matters already tried by a Court Martial. (56) If Magistrates ascertain that they have not been, nor will be tried by a Court Martial; to report to Governor General in Council. To proceed against other individuals, not of the above description as before. Takes away cognizance of actions of debts and other personal actions out of provisions of Section 22, of Reg. XX. A. D. 1810, in cases of persons amenable to those of 4 George IV. c. 81, Section 57; by which, Section 106 of 53 George III. c. 155, as to debts from European British subjects to natives of India, is repealed, and now come under Section 57, 4 George IV. c. 81. Such British subjects still amenable to the local courts of civil justice, under Section 107, 53

Debts, cognizance of by courts of requests. Or civil courts if above 400 Rs.

(53) G. O. C. C. 2nd Oct. 1821, (and 23rd Nov. 1831.)

(54) This means in time of peace.

(55) Beyond 120 miles from Fort William, Fort St. George, and Bombay, (Sec. 2, 4 Geo. IV. c. 81).

(56) Sec. 16, 4 Geo. IV. c. 81.

George III. c. 155, for debts above 400 Rupees." (57) (A. D. 1825, Reg. XX. 30th December, 1825.)

Sale of property to native princes, &c. if above 5,000 Rupees, sanction of Government required. Nor correspond with them, direct.

12.—"Neither civil nor military officers of the Hon'ble Company's service, are to sell to foreign Princes, and Chiefs, or natives of rank or opulence, residing under the protection of the British Government, without due intimation to Government, through the principal local authorities, of the proposed sale and transfer, grounds, houses, boats, equipages, horses, elephants, plate, furniture and generally every description of private property, exceeding the value of 5,000 Rupees, without the sanction of Government being previously obtained, under such penalties as the particular circumstances of the case may demand." "Nor (G. O. 18th September, 1813) are civil and military officers of Government, to carry on any communication with native Princes and Chiefs, or their Vakeels; except through the channel of the political agents of Government." (G. O. G. G. in C. 7th November, 1821.)

Presents not to be taken by any public servant, &c.

13.—" Nuzzurs, *(presents.)* The custom of taking Nuzzurs, from natives, of money, trays of fruit, and other articles, on occasions of official and complimentary visits to public functionaries in the service of the Hon'ble Company, is abolished throughout all the provinces subject to this (Bengal) presidency, from date of publication of this order, for the information of all public officers. The public functionaries to acquaint all natives with whom they have official or private intercourse, of this prohibition; and make it generally known. (The tendency of menial servants, &c. to extortion." *Resolution of Government, 2nd June,* 1829.) " His Lordship in Council is persuaded, it will be received with satisfaction by every officer in the Hon'ble Company's Service." (G. O. C. C. 23rd June, 1829.)

No commercial speculations by officers.

14.—*Commercial speculations.* " Any military officer proved to have been engaged in any *mercantile* or *commercial* speculations whatever, to the satisfaction of the Governor General in Council, to be forthwith suspended and sent to Europe; with a recommendation to the Hon'ble Court of Directors to discharge him from their army." (G. O. G. G. in C. 1st Jany. 1824).

SECTION 20.—MARCH OF TROOPS, CARRIAGE, SUPPLIES, &c. &c. &c.

Carriage of officers & soldiers baggage.

1.—*Carriage (No.* 360 *of* 1824, *G. O. G. G. in C. 2nd Dec.* 1824 : Sec. 28, Standing Orders, Bengal Native Infantry), *(after alluding to*

(57) It is now settled that Europeans can bring actions against Europeans in the civil courts, and instructions have, I hear, been sent to the civil authorities accordingly. The opinion before was, that natives only could sue Europeans in such courts.

superfluous baggage) "In respect to European officers, it is in *addition* to the carriage for their *camp equipage*, which, when on full tentage, they must always keep complete; agreeably with existing orders."

Hired camels. 2.—"Officers of the commissariat department, where Rewaree (*hired*) camels are procurable, and the collector or other civil officer in all other cases, will be strictly guided by these tables, as exhibiting the utmost extent of carriage sanctioned by Government."

Bearers, coolies public on indent. 3.—"*Individuals* with *families*, requiring *bearers, coolies*, (58), *or additional carriages, at a period of general relief*, are invariably to make their own arrangements, for which there is always ample time between the issue of the General Order, and the march of the corps."

Carriage on indent. 4.—"Carriage, is not to be supplied by the Commissariat or civil officer except on regular indent, countersigned by officers commanding corps. It is to be hired to a convenient stage in the adjoining district, beyond which it is not to be taken; unless the collector of that district shall certify that a relief cannot be furnished."

Collector. Copy of, to next collector for relief. 5.—"It will be the duty of the collector furnishing the carriage, to forward, immediately, to the collector of the adjoining district, the indent, or a copy thereof, in order to the preparation of the relief of cattle, &c. That this has been done, the officer commanding the troops will satisfy himself, previous to marching, by application to the collector, on every change of cattle."

For not less than a troop or company. 6.—"Indents are not to be made for any detachment under the strength of a company: on account of such a detachment it is presumed no difficulty can be experienced."

Demurrage half hire. 7.—"As carriage cannot always be procured at a moment's notice, it is equitable that the owners should be remunerated from the date on which it may be *furnished*; and it is hereby directed, that *demurrage* shall be paid at the rate of *half* the established hire of the district, from (59) the day on which the carriage is *procured* by the collector or other officer for military purposes, to that of marching; when the full hire is to commence. From the day *succeeding* the *date* of *arrival*, *half hire* is to be paid for the *return* cattle or carriage at the rate of (8) eight kos (60) per day. The rate of hire is to be fixed by the civil

(58) Bearers for doolies, or public use, by Commissariat on *indent*. *Commissariat Regulations*.

(59) *From*, includes the day hired, *from and after*, the day following. BOATS.—The ghats of districts are farmed out by the civil power, by whom extra boats will be supplied, on application, in cases of necessity, for crossing, &c. The commanding officer applies to the civil power.

(60) Better have said for each stage, as laid down in the route book.

or commissariat officer as may be. In the *first* instance, the half hire is to be paid by the civil or commissariat officer, and charged to *Government* in a *contingent bill*, vouched in the usual manner; in the *second*, it is to be paid by the parties discharging the carriage. The commanding officer will be held responsible that all claims are fairly and speedily adjusted."

8.—"It will be the duty of the officer commanding to see that *reasonable advances* (61) are made to the owners or drivers of the cattle; both before the troops move, and during the march, should a relief be unexpectedly protracted." Advances.

9.—"In the event of troops passing the *frontier* of the *British territory* without having been able to effect a relief of cattle, it will be the duty of the commanding officer, from time to time, to regulate the hire in as equitable a manner as possible; in communication with the commissariat officer, and with reference to the prices of fodder, grain, and other local circumstances." When beyond British frontier.

No. 1.

Table shewing the weight *of* baggage *allowed to be carried by the troops on a march, and the cattle and other carriage necessary for its conveyance, exclusive of camp equipage.*

	Weight of Baggage allowed for each Rank.		Carriage of either Description.				
			If Bullocks.	If Camels.	or Hackaries of 2 Bullocks.	3 Ditto.	4 Ditto.
	mds.	srs.					
Rank and File, Europeans or Natives, who do not carry Knapsacks,....................	0	15	0	0	0	0	0
Rank and File, N. I., or such other Troops as carry Knapsacks,......................	0	10	0	0	0	0	0
Married men, Europeans, when moving with their Knapsacks, at a relief, to have double,..	0	0	0	0	0	0	0
Serjeants, Havildars, and Native Doctors,....	0	20	0	0	0	0	0
Serjeant Majors, Qr. Master Serjeants and Staff Serjeants,........................	2	20	1	0	0	0	0
Warrant Officers,........................	3	20	2	1	0	0	0
Native Commissioned Officers,...............	1	20	1	0	0	0	0
Subalterns (1st and 2nd Lieutenants, Cornets, Ensigns, Assistant Surgeons, Adjutants, and Quarter-Masters,)......................	5	0	2	1	0	0	0
Capts. Surgeons, M. B., A. D. C., and D. P. Mr.	10	0	4	2	1	0	0
Majors and of equal rank,..................	20	0	8	4	2	0	1
Lieut. Cols. ditto ditto,....................	30	0	12	6	4	2	0
Colonels,.................................	40	0	16	8	5	3	2
For a Mess of 30 Officers, 4 mds. each,.......	120	0	48	24	15	8	6
Ditto 25 ditto,............................	100	0	40	20	23	7	5
Ditto 20 ditto,............................	80	0	32	16	10	6	4
Ditto 15 ditto,............................	60	0	24	12	8	5	3
Ditto 10 ditto,............................	40	0	16	8	5	3	2

(61) Half hire frequently.

No. 2.

Form of Indent for one Regiment of Dragoons.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.				
				If Bullocks.	If Camels.	or Hackaries of 2 Bullocks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
2 Lieut.-Colonels, ...	30	0	60	24	12	8	4	3
2 Majors, ...	20	0	40	16	8	5	3	2
10 Capts. (including Surgeon and Pay-master,)	10	0	100	40	20	12	7	5
29 Subalterns (including Adjutant, Qr. Master, 2 Assist. Surgeons and 1 Veterinary Surgeon.)	5	0	145	58	29	18	0	7
1 Riding-master, ...	3	20	$3\frac{1}{2}$	2	1			
1 Serjeant Major and 1 Qr. Master Serjeant,	2	20	5	10	5	37	20	15
40 Serjeants, ...	..	20	20					
712 Rank and File, (62)	..	15	267	107	53			
Total, ..	..	62	$640\frac{1}{2}$	257	128	80	34	32

N. B. This provides for a Regiment when complete: Indents are invariably to state the *actual* strength of the corps, the number and rank of the officers, and are to be made out accordingly.

No. 3.

Form of Indent for one Regiment of Light Cavalry.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.				
				If Bullocks.	If Camels.	or Hackaries of locks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
1 Colonel, ...	40	0	40	16	8	5	3	2
1 Lieut.-Colonel, ...	30	0	30	12	6	4	2	0
1 Major, ...	20	0	20	8	4	2	0	1
6 Captains and Surgeon, ...	10	0	60	24	12	8	4	3
15 Subalterns, (including Adjutant, Qr. Master and Assistant Surgeons,)	5	0	80	32	16	10	0	4
1 Riding-master, ...	3	20	$3\frac{1}{2}$	2	1			
16 Native Commissioned Officers, ...	1	20	24	9	5			
1 Serjeant Major and 1 Qr. Master Serjeant..	2	20	5					
36 Havildars (including Trumpet Major and Native Doctor,)	0	20	18	9	4	38	21	15
689 Rank and File, ...	0	15	258	102	51			
Total, ..	0	62	$538\frac{1}{2}$	214	107	67	30	25

N. B.—This provides for a Regiment when complete. Indents are invariably to state the *actual* strength of the corps, the number and rank of the European officers, and are to be made out accordingly.

No. 4.

Form of Indent for one Troop of European Horse Artillery.

	Weight of Baggage allowed to each Rank. (m.)	(srs.)	Total. (mds.)	Carriage of either Description. If Bullocks.	If Camels.	or Hackaries of 2 Bullocks.	3 Ditto.	4 Ditto.
1 Captain,	10	0	10	4	2	} 3	2	0
3 Subalterns,	5	0	15	6	3			
6 Serjeants,	0	20	3	} 16	8	5	0	2
100 Rank and File,	0	15	37½					
Gun Lascars, 2 Havildars, (including 1 Native Doctor,)	0	20	1	} 4	2	1	0	0
26 Naicks and Gun Lascars,	0	15	9¾					
Total,	..	62	76¼	30	15	9	2	2

N. B.—This provides for a Troop when complete. Indents are invariably to state the *actual* strength of the Troop, the number and rank of the European officers, and are to be made out accordingly.

No. 5.

Form of Indent for one Troop of Native Horse Artillery.

	Weight of Baggage allowed to each Rank. (m.)	(srs.)	Total. (mds.)	Carriage of either Description. If Bullocks.	If Camels.	or Hackaries of 2 Bullocks.	3 Ditto.	4 Ditto.
1 Captain,	10	0	10	4	2	1	0	0
3 Subalterns,	5	0	15	6	3	2	0	0
2 Native Commissioned Officers,	1	20	3	} 2	1			
2 European N. C. O.	0	20	1			} 1	0	0
6 Havildars,	0	20	3	} 16	8			
100 Rank and File,	0	15	37½					
Gun Lascars, 2 Havildars, (including 1 Native Doctor,)	0	20	1	} 4	2	6	3	6
26 Privates and Gun Lascars,	0	15	9¾					
Total,	..	62	8¼	32	16	10	3	0

N. B.—This provides for a Troop of Native Horse Artillery when complete. Indents are invariably to state the *actual* strength of the Troop, the number and rank of the European officers, and are to be made out accordingly.

No. 6.

Form of Indent for one Company of European Foot Artillery.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.		or Hackaries of		
				If Bullocks.	If Camels.	2 Bullocks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
1 Captain,	10	0	10	4	2	3	0	0
3 Subalterns,	5	0	15	6	3			
5 Serjeants,	0	20	$2\frac{1}{2}$	1	8	5	0	2
97 Rank and File, (62)	0	15	36	14				
Gun Lascars, 1 Subadar and Jemadar,	1	20	$1\frac{1}{2}$	8	4	2	0	1
Gun Lascars, 2 Havildars,	0	20	1					
Gun Lascars, 42 Gun Lascars,	0	15	16					
Total,	..	..	82	33	17	10	0	3

N. B.—This provides for a company of European Foot Artillery when complete. Indents are invariably to state the *actual* strength of the company, the number and rank of the European officers, and are to be made out accordingly.

No. 7.

Form of Indent for one Company of Native Foot Artillery.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.		or Hackaries of		
				If Bullocks.	If Camels.	2 Bullocks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
1 Captain,	10	0	10	4	2	1	0	0
3 Native Commissioned Officers,	1	20	$4\frac{1}{2}$	20	10	6	0	0
8 Havildars,	0	20	4					
114 Rank and File, (62)	0	15	43					
If with 1 Captain,	0	0	$61\frac{1}{2}$	24	12	7	0	0
If with 1 Subaltern,	0	0	$56\frac{1}{2}$	22	11	7	0	0

N. B.—This provides for a company of Native Foot Artillery when complete. Indents are invariably to state the *actual* strength of the company, the number and rank of the European officers, and are to be made out accordingly.

No. 8.

Form of Indent for one Regiment of European Infantry.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.				
				If Bullocks.	If Camels.	or Hackaries of		
						2 Bullocks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
2 Lieut.-Colonels, ...	30	0	60	24	12	8	4	3
2 Majors, ...	20	0	40	16	8	5	3	2
10 Capts. 1 Pay-master, and 1 Surgeon,.......	10	0	120	48	24	15	8	6
34 Subalterns, (including Adjutant, Qr. Master, and 2 Assistant Surgeons),................	5	0	170	68	34	21	11	0
1 Serjeant Major and 1 Qr. Master Serjeant,..	2	20	5					
50 Serjeants, ...	0	20	25	157	79	49	26	0
970 Rank and File, (62)...........	0	15	$363\frac{3}{4}$					
Total,..	..	..	$783\frac{3}{4}$	313	157	98	52	11

N. B.—This provides for a Regiment when complete. Indents are invariably to state the *actual* strength of the corps, the number and rank of the European officers, and are to be made out accordingly.

No. 9.

Form of Indent for one Regiment of Native Infantry.

	Weight of Baggage allowed to each Rank.		Total.	Carriage of either Description.				
				If Bullocks.	If Camels.	or Hackaries of		
						2 Bullocks.	3 Ditto.	4 Ditto.
	m.	srs.	mds.					
1 Colonel, ...	40	0	40	16	8	5	3	2
1 Lieut.-Colonel,..........................	30	0	30	12	6	4	2	0
1 Major, ...	20	0	20	8	4	2	0	1
6 Capts. (including Surgeon,)	10	0	60	24	12	8	4	3
16 Subalterns, (including 1 Assistant Surgeon,).	5	0	80	32	16	10	0	4
20 Native Commissioned Officers,........ ..	1	20	30					
1 Serjeant Major and 1 Qr. Master Serjeant,..	2	20	5	122	61	38	20	15
52 Havildars (including Native Doctor),......	0	20	26					
970 Rank and File and Drummers, (62)	0	10	$242\frac{1}{2}$					
Total,..	..	..	$533\frac{1}{2}$	214	107	67	29	25

N. B.—Thisprovides for a Regiment when complete. Indents are invariably to state the *actual* strength of the corps, the number and rank of the European officers, and are to be made out accordingly.

(Signed) W. CASEMENT,
Lieut.-Col. Secy. to Govt. Mily. Dept.

Coolies not to be pressed.

10.—*Coolies not to be pressed.* (*G. O. C. C. 7th August,* 1818.) "The orders of Government have repeatedly enjoined, on the part of the military, forbearance from all interference with the pursuits of the inhabitants of the country by *forcibly* requiring their services as *begarees* and *coolies*; pointing out the mode to be adopted in applying for aid from the proper authorities. These orders and regulations are calculated for all situations, whether *within* the *territories* of the *Honorable Company*, or of states in alliance with the British Government, and the most precise orders should be given to native officers proceeding in command of detached parties, to restrain their men from committing excesses, or violating the public peace, by any interference with local authorities." (A *proclamation* was issued on this subject, G. O. G. G. in C. 15th April, 1820, See G. O. C. C. 26th January, 1829, and *Circular* A. G. O. No. 1345, 21st May, 1818, No. 690 C. 18th Nov. 1818, and No. 3976, 6th May, 1820. This order is not considered applicable to the regulation for the supply of *porters* in the mountainous parts of the British dominions, on the N. W. Frontier. Printed copies, in *English* and *Persian*, of the *proclamation*, in the Judicial Department, destributed to corps.) (63)

Not applying to hill porters.

Supplies.

Circular to commanding officers.

11.—Supplies, (*Circular to commanding officers of corps, No.* 1554, *A. G. O.* 15*th Oct.* 1832, *grounded on G. O. V. P. C. No.* 128, 5*th Aug.* 1831, *and resolutions in the Revenue Department,* 5*th Jan.* 1833, *No.* 15, *of* 1833, *G. O. V. P. C.* 21*st Jan.* 1833, *Relief* 1832-33.)

Notice of day of march to civil authorities.

1.—" On receiving the route by which the corps is to move, you will be pleased, without any unnecessary delay, to make the requisite communications to the *civil authorities* of the districts in your route, specifying the date on which the corps will arrive at each of the stages on the march, and noticing the places at which it will halt, for one or more days."

Or, if delayed.

2.—" Should any unexpected difficulties, or any subsequent orders, cause a change in the date fixed for the arrival of the corps at any of the stages, you will take care to give early notice of this change to the civil authorities, that the necessary instructions may be given to the native civil officers respecting the provision of supplies at the proper time."

Indent to collector for grain.

3.—" The communication to the collector is to be accompanied with an *indent*, of the accompanying form, and the supplies therein enumerated are the only articles which he will be expected to provide;

(62) The numbers vary, owing to late reductions, &c. &c.

(63) See Note 48.

it will therefore become your duty to make such arrangements as may appear to you to be necessary, for enabling the *bazar* of your regiment to furnish all other articles that may be required for the comfort of your men, such as *pawn, tobacco, goor,* &c.; and it is confidently believed, that little difficulty will be experienced in doing this, as these articles are of easy transport, and the large towns in your route, or at a short distance to the right or left of the road, will afford frequent opportunities for your *bunneahs* to replace the quantity that is used during the march." Not for pawn, tobacco, goor, &c.

4.—"In preparing the *indent*, the *ration* for each individual, laid down in the annexed *form*, is not to be *exceeded*: you will probably find, that it may be *reduced* in some points without inconvenience; and it is expected that you will ascertain as nearly as possible, by actual enumeration, (which can easily be done,) the number of *followers* attached to your corps, including officers, servants, and the *families* and *followers* of the native officers and men; their number is to be inserted in the *indent* under the proper head, in the same manner as the number of *fighting men*, in the *form* sent for your guidance. You are also expected to ascertain the quantity of *gram* required daily for the corps, that all unnecessary requisitions for this article may be avoided." No excess of amount in form of indent. Families to be enumerated.

5.—"The *civil authorities* of the districts in your *route* have been instructed to depute a *native officer* of respectability, to meet your regiment the day before it enters their district, whose duty it will be to wait upon you, to receive any instructions you may think it necessary to give; he will then precede the corps, daily, to insure the supplies being in readiness, and to satisfy himself that they are of good quality. You will of course cause this *native officer* to be treated with proper *consideration*, by all those under your orders." Native officer deputed. So on daily. Treated with respect.

6.—"To secure a strict observance of the orders regarding the supplies for the regiment, as well as to prevent all *oppression* on the inhabitants, you will select a *native commissioned officer* of *respectability*, and on whom you can depend, to proceed regularly in charge of the *russud guard*. It will be this officer's duty to prevent any *disturbances* from taking place in the *villages* in which the supplies are collected, and to afford every *protection* in his power to the people who bring the supplies." Native commissioned officer with russud guard.

7.—"This officer will receive the articles mentioned in the *margin*, and pay for them; he will of course be careful to see the *wood* weighed, and that the *grass and earthen pots* are supplied according to the statement given to him. The *civil officer* will furnish the *carriage* for these articles to *camp*, when they will be made over to the *chowdry* of the Fire-wood, grass, earthen pots.

bazar, or to such other person as you may entrust with the duty of retailing them to the officers and men; any portion of these articles that may be *unsold*, at the time fixed for closing your bazar, are to be returned to the *taul-walahs* from whom they have been received, and who will *refund* the *price* of the quantity they may receive back, at the rate fixed in the morning. It is probable, that the *retail* of the wood will be much facilitated, if brought to the *camp* tied up in bundles of five seers each."

Surplus wood returned.

Advance of cash to corps, to pay for wood, &c.&c.

8.—"An *advance* to the extent of 200 rupees will be made to you by the military pay-master of your division, on your receipt, to enable you to comply with the orders contained in the foregoing paragraph, for advancing, in the first instance, the *wholesale* price of the *wood, grass, and pots*, required daily, which is to be recovered every day by the *retail sale;* and this advance will be *repaid* to the pay-master at the close of your march."

No wood, opla.

9.—"It may occasionally happen, that the quantity of *firewood* indented for cannot be supplied; in which case *opla* will probably be furnished, and it is supposed that three seers of *opla*, that is well dried, will be equal to the *wood* allowed for a sepoy."

Amount of indents reduced if practicable.

10.—"I am directed to notice, that the quantity of *atta, dhal, ghee,* &c. allowed for each individual in the *indent*, has been fixed on an abundant scale, on a comparison of several indents actually received from different corps that marched last year, and is not to be exceeded; it will probably, in some articles, be found more than enough; but a few days' experience of the quantity actually expended by your regiment will enable you to make such reduction in your *indents* as may appear to you to be necessary."

Fowls, kids, milk, &c. from villages by officers' servants.

11.—"The officers and others belonging to your regiment, who may require *fowls, kids, milk,* or other articles not specified in the form of *indent*, must procure them by sending their *servants* into the neighbouring *villages* with *ready-money* to purchase them. The native officer who attends the regiment on the part of the collector will be able to give information where such articles are likely to be found: but you will clearly understand, that he is not to interfere by his authority, in procuring them; and it is expected, that by attending to this order, better articles will be procured, than by the system heretofore in force, of *compelling* people to furnish supplies, at a price *arbitrarily* fixed by a chuprassee, or other civil officer."

To report working of system.

12.—"His Excellency relies on your exerting yourself to carry into effect, in the course of the march of your regiment, the system which is here laid down; and he requests, that at the conclusion of your march,

you will *report* to me (adjutant-general), for his information, what have been the *results*, whether the regiment has been regularly supplied with the provisions indented for, and whether the method of furnishing and paying for the wood, &c. as well as of procuring the different articles *not noted* in the *indent*, have been found to answer. He will be happy to receive any *suggestions*, which the *experience* you will have acquired may suggest, for the *improvement* or *modification* of this *plan*." Suggestions as to improvement.

13.—" The regulations (G. O. V. P. 5th August, 1831), regarding the payment of *paemalee* or *damage* done to the *crops* on a march, and the existing orders regarding troops marching for a *relief*, (64) are to be strictly attended to. An abstract of these orders is contained in the 28th Section of the Infantry Standing Orders. Paemalee or damage to crops.

FORM.

Indent No. —— on the Collector of Revenue ——— for Supplies, &c. required for the use of the —— Regiment Native Infantry, at —— on the ——— 183—. (Place and date.)

Supplies.	European Commissioned & N. C. O. & Families. No.			Fighting Men. Subadars, 8; Jemadars, 8; Havildars, 40; Naicks, 40; Drummers, 16; Sepoys, 640; Total, 752			Camp Followers. No.			Public and Private Cattle.			Total, Supplies.			Remarks.
	Maunds.	Seers.	Chittacks.	Maunds.	Seers.	Chittacks.	Maunds.	Seers.	Chittacks.	Maunds.	Seers.	Chittacks.	Maunds.	Seers.	Chittacks.	
Atta or Rice. } one seer per fighting man, ½ seer per camp follower,																
Dhal, 2 chittacks per fighting man and C. F.																
Ghee, 1 chittack ditto ditto do,																
Salt, ½ ditto ditto ditto ditto,																
Gram,																
Earthen Pots, at 15 per Company,																
Firewood, or Fuel, 1½ seer per man,																
N. B.—15 or 20 seers may be allowed for each European N. C. O. and 1 maund for each commissioned,																

"I do hereby certify, that the articles specified in this indent are indispensably necessary for the use of the —Regiment Native Infantry, according to the best of my judgment and belief, after the most careful examination."

(Signed) A. B.

Comg.—Regt. N. I.

Exd. C. D. *Intr. and Qr. Mr.*

(64) See No. 16, *post*.

Sick native soldiers. Carriage, 2 doolies.

12.—*Carriage for the Conveyance of Sick, &c.* G. O. G. G. in C. No. 133 of 1830, 9th July, 1830, (Para. 5.) 1.—"On ordinary occasions of march, such as during the *relief* of corps, two doolies, with bearers, are to be allowed to each *native* regiment of cavalry or infantry, and as more conducive to the comfort and satisfaction of *patients*, who may fall sick on the route than *doolies*, limited as they hitherto have been in number, good *hackeries* are in part to be substituted for them: in addition to the two doolies, each corps will march from cantonment with one hackery, adding to the number, as the sick may require more carriage, to the extent, if necessary, of one hackery for every two troops or companies; beyond which, unless under very urgent circumstances, carriage for the conveyance of the sick, is not to be entertained." (1 doolie in cantonment, and 5 bearers.)

Hackeries.

Doolies of service, &c.

2.—"Doolies for sick, if service expected, covered hackeries (to carry from 6 to 10 men) not procurable by the commissariat, on ordinary occasions." Circular, 509 (A) A. G. O. 7th May, 1832. Proportion allowed for regiments and detachments, (*hackeries.*) L. M. S. G. M. Dept. No. 287, 14th Oct. 1830. (65)

European sick 1 doolie to 20 men.

3.—*European sick.* (G. O. V. P. C. No. 96 of 1832, 18th June, 1832). "The proportion of *doolies* to be allowed to European troops, when marching upon ordinary occasions *of relief*, shall in future be one doolie to every 20 men."

Field proportion in the Mhow, &c. Field forces.

4.—"The full field proportion (66) of doolies to be allowed, in future, to *European* troops, when marching on ordinary occasions of relief, to or from the stations of *Saugor, Mhow*, and *Nusseerabad*." (G. O. G. G. in C. No. 25, of 1833, 12th Feb. 1833.)

Carriage for medicines.

13.—*Carriage for Medicine. (G. O. G. G. in C. No.* 114, *Para.* 7, *of* 1829, 30*th May*, 1829.)

(65) Doolies on service or hackeries not procurable, (natives) one to each company. The hackeries to have *Sirkee coverings*, to be *supplied* by Commissariat if not already on. *(Circular A. G. O. No.* 604, 29*th April*, 1831.) *Detachments* with a wing, one doolie, and adding, when necessary, one *hackery*, if indispensibly necessary, a 2nd with 3 companies, one doolie, and one hackery if necessary. With one or two companies, one doolie, or one hackery, as may be preferred; but not both; each doolie on a march to have 6 bearers. *(Circular Commissary Genl.'s Office,* 22*nd Sept.* 1830.) The executive Commissariat officer furnishes the bearers; the Barrack Master, or Executive Engineer, the doolies: they are ordered in station orders, but the Quarter-Master makes out indents for them.

(66) One for 10 men. G. O. G. G. 29th Oct. 1807.

1.—A brigade of horse artillery, A regiment of dragoons, A battalion of foot artillery, or A regt. of European infantry,	2 camels, 1 hackery, and 1 bhangywallah, for all purposes, the conveyance of clothing excepted.
A regiment of native cavalry, or infantry,	1 camel, 1 bhangywallah.
Detachments.	
1 or 2 troops of horse artillery, 1 to 4 troops of dragoons, 1 to 4 companies of European artillery, or infantry, A detachment of from 100 to 400 Europeans,	1 camel and 1 bhangywallah.
Half a regiment of native cavalry or infantry, when the medical officer is present,	Ditto.
All small detachments, when a medical officer, European or native, is attached,	1 bhangywallah.

2.—(*Para.* 8.) "In the lower provinces, two bullocks to be allowed in lieu of one camel."

3.—(*Para.* 9.) "Camel trunks and camp baskets (patarahs) to be provided by the commissariat, at the public expense."

4.—(*Para.* 10.) "The camels for the conveyance of medicines, &c. to form part of the regular permanent establishment."

Carriage of arms of sick.

14.—*Carriage of arms of sick men.* (G. O. G. G. in C. No. 248 of 1828, 22nd Nov. 1828.) "To provide for the carriage of the arms of the sick, officers commanding corps of cavalry and infantry are authorized to entertain, as circumstances may require, one or two substantial hackeries, of the ordinary build of the country. To be taken into pay and discharged on the same dates as the other extra establishments. Pawlings to be used to cover the arms from rain. Hackeries when occasionally required in *cantonment* may be entertained. The expense in both cases to be drawn in a *contingent bill*, duly vouched and countersigned."

Orders to be observed at reliefs.

15.—*Orders to be observed when marching at a relief, &c.* G. O. C. C. 28th August, 1832. 1. "Strict attention is to be paid to the standing regulations of the service, relative to the *notice* required to be given to the *civil authorities* in the districts through which the routes of corps and detachments may lie. To the transmission or *progress*,

and other *reports*, to head quarters, (67) and during the absence of His Excellency the Commander-in-Chief from the presidency, *duplicates* of all such reports, to the officers in charge of the adjutant-general's and quarter-master-general's offices in Calcutta."

Routes. 2.—" Routes will be furnished to corps above Benares, from the quarter-master-general's office at head quarters, and to corps at and below Benares, from the quarter-master-general's office at the presidency. The routes so furnished are to be strictly adhered to; (68) unless unforeseen circumstances should, at any time, render a deviation necessary; in which case, the causes of such deviation are to be specially reported through the quarter-master-general.

Reports to adjutant general and quarter-master-general. 3.—" All commanding officers are enjoined to pay particular attention to G. O. C. C. 2nd Oct. 1821, (' all references regarding the movements of troops, whether at *reliefs* or on *actual service*, or on casual duties; and all reports on the state of the roads, &c. are invariably to be made to the quarter-master-general of the army')—and to—10th February, 1829, (' to make *weekly reports* of the progress of corps to the quarter-master-general; *duplicates* of reports made to the quarter-master-general, to be sent to the quarter-master-general's office, at the presidency')—and to report minutely on the points therein referred to."

Encampments. Crops. 16.—*Encampments, destruction of Crops (paemalee)—Compensation for.* (G. O. V. P. C. No, 128 of 1831, 5th August, 1831. 1.—" Whenever, from unavoidable encroachment of a camp on cultivated lands, the crops within its limits, or in its immediate vicinity, shall be injured or destroyed, a *compensation* equal to the loss sustained to be paid on the *spot*, to the actual sufferer or sufferers, by the officer of the quarter-master-general's department, attached to the force, (if a single corps, by the quarter-master of the regiment,) in concert with

Compensation.

(67) To the Quarter-Master-General of the army. (G. O. C. C. 23rd Nov. 1831; 2nd Oct. 1821.) Reports of marches and state of the roads, weekly reports of progress to him, and a journal of their route. (*G. O. C. C. 10th Feb.* 1829, *See G. O. C. C. 16th Sept.* 1819). By G. O. C. C. 4th Sept. 1827. Duplicate reports to Quarter-Master-General's Dept, Presy. for information of Government, contingent bills for guides and intelligence to Quarter-Master-General (if on Eastern Frontier, and below Benares, by the Depty Quarter-Master-General, Presy.), for counter-signature and registry. Weekly reports of progress to Adjutant-General. (Duplicate to Depty A. G. Presy. when head-quarters not there.)

(68) Alterations not to be made, except in urgent cases, to be reported immediately to the Quarter-Master-General and civil authorities. (*G. O. C. C. 16th April*, 1832).

the native civil officer deputed by the collector of the district to attend the camp."

Statement of payments. Receipts. Vouchers to quarter-master-general.

2.—" A statement of all such payments, prepared according to the annexed *form*, accompanied by the requisite *receipts* and *vouchers*, and by a duly attested *contingent bill* for amount dispensed, is to be transmitted monthly, to the quarter-master-general of the army, by whom the bill, on being found correct, will be countersigned and returned to the drawer, for the purpose of being forwarded to the pay department for final adjustment."

Advances by commissariat.

3.—" Such *advances* as may be required to meet the object above contemplated will be made by the commissariat officer, European or Native, attached to the troops in camp, under the written authority of the officer commanding."

To select ground where least cultivation.

4.—" Officers of the quarter-master general's department and regimental quarter-masters will be particularly careful, in taking up ground for detachments or corps, to select those spots where the least possible damage will be sustained; and it is hoped and expected, that in the movements of single regiments, or of smaller parties, sites for encampment will generally be found where injury to crops or cultivated fields may be altogether avoided."

Contingent bill.

CONTINGENT BILL.

Statement of sums disbursed from the —— to the —— of —— 18 ——, on account of compensation for injury done to crops, by the camp of the force under command of —— on route from —— to ——.

Zillah.	Pergunnah.	Mouza (village).	Names of the Cultivators.	Quantity of Land injured.
Benares,......	Gungapoor, ...	Sarie Mohun,..	Sadoollah Khan,.....	1 2 3 (69)
Ditto,........	Ditto,........	Thut'hra, near Tamashabad,	Ramjeivan,.........	
			Burriar,...........	
Allahabad,....	Ipoonore,.....	Unjunun,......	Shu Golam Tewarry,.	
Ditto,........	Ditto,........	Ditto,........	Pullut Doobee,......	
Ditto,........	Ditto,........	Ditto,........	Mata Dial,..........	
Ditto,........	Ditto,........	Ditto,........	Doorga Pundit,......	

Description of Crops.	Amount Compensation.			When Paid.	Remarks.
	Rs.	*As.*	*Pie.*		
Paddy, Urhur, Gram, or whatever the crop may be.					On receipt of individuals, as appended.

C. D.
Commanding.

A. B.
Assistant Qr. Master General,
(or Qr. Master, if a Regiment, &c.)

(69) 1 Laduma Bigah.
2 Ditto Biswah or Cottah, 20=1 Bigah.
3 Ditto Chittacks, ... 16=1 Biswah or Cottah.

SECTION 21.—ORDERS ON ENTERING AN ENEMY'S COUNTRY. PROVOST-MARSHAL, SAFE GUARDS, &c. *By the Duke of Wellington in Spain. Irureta, 9th July,* 1813.

Entering an enemy's country. 1.—"The commander of the forces is anxious to draw the attention of the officers of the army, to the difference of the situation in which they have been hitherto placed, among the people of *Portugal* and *Spain*, and that in which they may hereafter find themselves, among those of the frontiers of *France*." (70)

Troops not to leave camp or cantonments. 2.—"The soldiers and their followers must be prevented from wandering to a distance from their camps and cantonments, on any account whatever."

Inhabitants to be well treated. 3.—"As the country in front is an enemy's, the commander of the forces is particularly desirous, that the inhabitants should be well treated, and private property must be respected, (71) as it has been hitherto."

The enemy a general enemy. 4.—"The officers and soldiers of the army must recollect, that their nations are at war with France, solely because the ruler of the French nation will not allow them to be at peace, and is desirous of forcing them to submit to his yoke; and they must not forget that the worst of the evils suffered by the enemy, in his profligate invasion of *Spain* and *Portugal*, have been occasioned by the irregularities of the soldiers, and their cruelties, authorized and encouraged by their chiefs, towards the unfortunate and peaceful inhabitants of the country." Their cruelties.

Revenge unmanly toward the people. 5.—"To revenge this conduct on the peaceable inhabitants of France would be unmanly, and unworthy of the nations to whom the commander of the forces now addresses himself (*Spaniards* and *Portuguese*), and at all events would be the occasion of similar and worse evils to the army at large, than those which the enemies' army have suffered in the peninsula, and would eventually prove highly injurious to the public interests." (72)

(70) Duke of Wellington's orders, Principles of War on entering France.

(71) "A soldier should not forget to behave with humanity to such persons, in an enemy's country, as can make no resistance; that is, to the poor peasants, women, and children; and they should at all times meet with his protection." (*G. O. of General Wolfe*) p. 262, *Do.*

(72) "Plundering, marauding, cutting down avenues, trees, dykes, plucking up sticks out of vineyards, destroying bee-hives, fishing and draining ponds, hunting and killing, are all forbidden by the Articles of War, under penalty of suffering death for the offence."

"A friend's country is by no means to be violated; economy and prudence lead us to avoid it, even to our enemies. Many instances show what great things have been obtained by lenity and good order among our foes, as provisions, intelligence,

6.—" The rules therefore which have been observed hitherto, in requiring, and taking, and giving receipts for supplies from the country, are to be continued in the villages on the French frontier, and the commissaries to each of the armies, of the several nations, will receive the orders from the Commander-in-Chief of their nations, respecting the mode and period of paying for such supplies." (G. O. D. of W. Principles of War, p. 261-2.)

To give and take receipts for supplies.

Payment for.

Articles of War read to Troops on entering on Service.

1.—" Death is the absolute punishment for cowardice or misbehaviour before an enemy, or speaking words inducing others to do the like." *(See Art. of War,* 10.)

Articles of war read on entering on service against cowardice.

2.—" If any soldier is base enough to attempt to desert to the enemy, on being apprehended and convicted, he will suffer immediate death." (*Art. of War,* 8.)

Desertion.

3.—" Any person forcing a safeguard will suffer death." (*Art. of War,* 14.)

Forcing safeguards.

4.—" For mutiny, or concealing a mutiny, (*Art.* 7 ;) desertion, (*Art.* 8 ;) corresponding with an enemy, directly or indirectly ; or relieve him with money, victuals, or ammunition, or knowingly harbour," (*Art.* 9 ;) compelling an officer to abandon or give up his post, or persuading others to do the like, (*Art.* 10 ;) leave his commanding officer, post, or colors, to go in search of plunder, (*Art.* 11 ;) strike a superior officer, draw or offer to draw, or lift up any weapon, or offer any violence, against him, in the execution of his office," (*Art.* 12 ;) disobey any lawful commands of his superior officer, (*Art.* 13 ;) violence to persons bringing provisions, &c. (*Art.* 14 ;) make known the watch word to any person not entitled to it, (*Art.* 15 ;) false alarms, by discharging fire-arms, drawing swords, beating drums, making signals, using words, or by any means whatever, (*Art.* 16.) cast away his arms or ammunition in presence of an enemy, (*Art.* 17 ;) sleeping on his post, or leaving it before regularly relieved, (*Art.* 18 ;) *Death, Transportation, or such other punishment.*"

Mutiny. Correspond with enemy. Plunder.

Violence to persons bringing provisions. Watch-word. False alarms.

Cast away arms, sleep on post.

5.—" Advise or persuade others to desert, &c. (*Art.* 20 ;) drunk on duty under arms, (*Art.* 22 ;) send a flag of truce to the enemy without due authority, (*Art.* 24 ;) give a false parole or watch-word."

Flag of truce without authority.

&c. ; otherwise they will secrete or destroy, rather than be plundered, quit the country, and leave it a desert. Sometimes, indeed, it may be necessary to plunder or destroy our enemies, nay, our own country, to frustrate their designs. The least violation, however, is never to be permitted, when it is possible to avoid it." (*G. O. of King George* II.) (When proper to be done, must be by order of the Commander-in-Chief, &c.)

Alarms. (*Art.* 25.) " Spread false reports by words or letters, or create unnecessary alarm by spreading such reports," (*Art.* 26 ;) " In action, or before going into action, use words tending to create alarm or despondency, (73) (*Art.* 27 ;) disclose verbally, or in writing, the numbers, positions, Information to the enemy. magazines, or preparations of the army for sieges or movements, and by such mischievous communications, produce effects injurious to the Leave ranks. army and our service, (*Art.* 28 ;) leave the ranks to secure prisoners Guard or piquet. or horses, or on pretence of taking wounded officers or men to the rear, without orders from his superior (*Art.* 29 ;) leave his guard or piquet, or post ; or be taken prisoner by any want of due precaution or by disobedience of orders ; or fall into the enemy's hands by passing Seizing supplies. through out-posts, (*Art.* 30 ;) " Irregularly detain, seize, or appropriate to his own corps or detachment, bread, spirits, forage, or any Disobey orders of civil power. supplies proceeding to the army, contrary to orders," (*Art.* 31 ;) who shall wilfully neglect or refuse to deliver over to the civil magistrate ; or to assist in the apprehension of officers or soldiers accused of crimes punishable by law," (*Art.* 34 ;) who shall impede the provost-mar- Or provost-marshal. shal or any other officer legally exercising authority ; or refuse to assist him when requiring his aid in the execution of his duty," (*Art.* 35 ;) (*If a commissioned officer, be cashiered ; if a soldier, on proof before a general, district, or garrison court-martial, as the case may be, liable to such punishments as shall accord with the provisions of the Mutiny Act.*)

Drunkenness. Sleep out of quarters. 6.—" Drunkenness, (*Art.* 52 ;) sleeping out of quarters, garrison, or camp, without leave from his superior officer, (*Art.* 53,) (*Punished, according to the degree of his offence, by a general, district, garrison, regimental, or other court-martial ; and in addition may be deprived of his regular pay for the days on which he shall have been guilty of the offence.*)

Release prisoners without orders. 7.—" Release a prisoner without proper authority," (*Art.* 55 ;) neglect to obey any garrison or other orders, (*Art.* 57 ;) absence from parade, or rendezvous, or go from thence without leave ; or quit Leave camp. Or platoon without leave. platoon or division, without urgent necessity, (*Art.* 61 ;) any soldier found one mile from camp without leave in writing, (*Art.* 63.) (*Officers, liable to be cashiered ; soldiers, punished at discretion, by a general, district, garrison, regimental, or other court-martial, and if tried by a general court-martial, with forfeiture of pay and pension.*)

Committing waste or depredations. 8.—" Any officer or soldier committing any waste or spoil, in walks of trees, parks, warrens, fish-ponds, houses or gardens, vineyards, olive

(73) See case at p. 109, Prac. of Courts Martial. G. O. H. C. 14th Sept. 1815. (*New Orleans.*)

groves, corn-fields, enclosures or meadows; (74) or maliciously destroy any property, whether belonging to our own subjects, or to inhabitants of other countries; unless the destruction of property shall be ordered by the Commander-in-Chief of our forces, to annoy rebels or other enemies in arms against us." "Any person committing waste in gardens, orchards, plantations, or enclosures, will be most severely punished." (75) "These punishments will attach equally to the *followers* and *retainers* of the camp, as to soldiers, and must be explained to them by the officers commanding the regiments by which such followers or retainers are employed." (*General Regulations and Orders, pp.* 237, 238.)

Unless by order of commander-in-chief.

Equally applies to camp-followers and retainers.

Section 22.—Provost-Marshal,—Appointment, Duties and Powers of. (76)

1.—"For the prompt and instant repression of all irregularities and crimes abroad, which may be committed by troops in the field and on the line of march, provost-marshals shall be appointed by us, or by our commander of the forces, or general commanding, and their powers shall be regulated according to the established usages of war and rules of the service; their duties are to take charge of prisoners confined for offences of a general description; to preserve good order and discipline; to prevent breaches of both, by soldiers and followers of the army, and to punish *on the spot*, or the same day, those whom they may find in the immediate act of committing breaches of good order and military discipline: *provided*, that the punishment be limited to the necessity of the case, and shall accord with the orders (77) which the provost may from time to time receive from our commander of the forces in the field, and that whatever may be the crime, the provost-marshal shall see the offender commit the act, for which summary punishment may be inflicted, or if the provost-marshal or his assistants should not see the offender actually commit the crime, but that sufficient proof can be established of the offender's guilt, a

Provost-marshal.

Powers.

Duties.

Preserve good order and discipline.

Punish those caught in the act on the spot.

If not seen by provost-marshal, a report made by him.

(74) G. O. C. C. 29th Oct. 1817. Head-quarters, camp Loharee. "Military law being now in full activity, officers are requested to explain to their servants and followers, that any plunder or outrage to the inhabitants of the country through which the army passes will be summarily punished with the utmost severity. Powers and orders for these inflictions, in cases where the guilt shall be duly substantiated, will be given to all the officers at advanced posts." (*By the Marquis of Hastings.*)

(75) Article 58.

(76) Article 101 and 235, General Regulations and Orders.

(77) These should be in writing, and a copy given to each regiment, &c. and be duly explained; also any additional orders.

report shall be made to the commander of our army in the field, who is hereby empowered to deal with the case as he may deem most conducive to the maintenance of good order and military discipline. (78) The duties of provost-marshals being limited to the punishment of offenders whom they may detect in the actual commission of any crime, the general commanding our forces in the field will cause them to exercise the powers entrusted to them, in such manner, and under such circumstances, as he may consider best calculated to prevent, and instantly to redress, crimes injurious to the discipline of our army and the public service." (*Art. of War*, 101.)

If any impede the provost-marshal or his assistant.

2.—"Who shall impede the provost-marshal or any other officer legally exercising authority; (79) or refuse to assist him when requiring his aid in the execution of his duty." (*Art.* 35. *If a commissioned officer, be cashiered; if a soldier, shall, on proof thereof before a general, district, or garrison court-martial, be liable to such punishments as shall accord with the provisions of the Mutiny Act.*—See para. 8.

Provost-marshal rank of Captain.

3.—"The officer appointed to the situation of *provost-marshal* has the rank of Captain in the army: the appointment is one of great responsibility, and requires the utmost vigilance and activity. It is the particular duty of the provost-marshal to take charge of prisoners, &c. to use every possible means to prevent the commission of crime, by frequently visiting those places at which breaches of order and discipline are likely to be committed: he is to take cognizance of the conduct of all *followers* and *retainers* of the camp, as well as of the soldiers of the army."

To visit places where crimes are usually committed or suspected.

To make a tour of the camp and environs.

4.—"With this view, he is frequently to make the tour of the camp, and its environs, in order to prevent and detect persons committing acts of disorder, or depredations."

May inflict summary punishment on those caught in the act.

5.—"The provost-marshal is entrusted with authority to inflict *summary punishment* on any soldier, or individual connected with the army, *whom he may detect in the actual commission of any offence against good order and discipline*; but a recourse to the exercise of this part of his authority must be limited to the necessity of the case, where the prevalent and continual commission of any particular offence may call for an immediate example."

Plundering more severely punished in a foreign country.

6.—"*Plundering* and *marauding*, at all times highly disgraceful to soldiers, under the circumstances in which the army would take the

(78) A drum-head court-martial is held where immediate example is necessary, or tried by a detachment court-martial composed of three officers, Clause 12, M. A. or as the case may require. (*See No.* 12).

(79) An assistant provost-marshal is usually appointed to each division.

field, in any part of the *United Kingdom*, and committed against the *persons* and *property* of our *own countrymen*, whom it is our duty to protect, will become *crimes* of such enormity, as to admit of no remission of the awful punishment, which the military law awards against offences of this nature. *The provost-marshal, in making his rounds, will be authorized to execute it immediately, and in its greatest rigour, against all such as are detected by him in the fact.*"

7.—"General officers commanding divisions and brigades, and the staff-officers attached to them, are to give their particular attention to the conduct of provost-marshals, and of his assistants, and to take care that every requisite aid be given to enable them to discharge their duties with proper effect; (*see para.* 2,) at the same time that no abuse, or improper application be made of the authority entrusted to them."

General officers of divisions to attend to conduct of provost-marshal and assistants, and aid them.

8.—"Officers in command of guards or detachments are also enjoined to give assistance to the provost-marshal in the execution of his duty; and any officer or soldier impeding him in the same, or offering him any *insult*, will receive the most exemplary punishment." (*Art.* 35.)

And by officers commanding guards, &c.

9.—"The regiments encamped near villages must send frequent *patroles* into them, to apprehend such persons as may be there without *passes*; or who, having passes, may behave improperly." (*Regimental Regulations and Orders, pp.* 235, 236.)

Regiments near village to send frequent patroles to apprehend.

10.—*Duties of Provost-Marshals and their Assistants. G. O. Frenada, 1st Nov.* 1811. "The commander of the forces is concerned to observe, that the power of the assistants of the provost-marshal of the army has, in more than one instance, been abused; and that officers have thought themselves authorized to send orders to the assistant-provosts, under which orders *abuses* have been committed, contrary to the established *usages and the rules of the service*, and the intentions and orders of the commander of the forces."

Abuse of power by assistant provost-marshal, no orders to by officers.

11.—"The office of provost-marshal has existed in all British armies in the field. His particular duties are to take charge of the prisoners, &c. (as in para. 1) to prevent breaches of good order and discipline by the soldiers and followers of the army, by his *presence* at those places in which breaches of either kind are likely to be committed; and if necessary, he has, by constant *usage* in all armies, the power to punish those whom he may find in the act of committing breaches of order and discipline." (80)

Office of provost-marshal by custom of war.

(80) D. of W. Ors. p. 289. "When the army forages, the grand provost of each nation shall patrole with a detachment of cavalry, to punish with *death* all those

No summary punishment, unless caught in the act.

12.—"The authority of the provost-marshal to punish must be limited to the *necessity* of the case; and whatever may be the crime of which a *soldier* may be guilty, the provost-marshal has not the power of inflicting summary punishment for it, unless he should see him in the act of committing it. If he should not see the soldier in the act of committing the offence of which he may have been guilty, a *report* must be made to the Commander-in-Chief of the army, who would give such orders upon the case as might be deemed expedient, either for further *inquiry* (81), for the *trial* of the soldier, or for the infliction of *summary punishment*, according to the nature of the case, the degree of evidence of the soldier's guilt,(82) and the existing necessity for an *immediate example*."

Report and trial or summary punishment.

Assistant provost-marshals duties same as that of provosts. Conduct to be watched by general and staff officers.

13.—"The duties and authorities of the assistants of the provost-marshal, attached to the several divisions and stations of the army, are the same as those of the provosts; but the conduct of these officers, and the exertion of their authority, require the constant and watchful attention of the general officers commanding divisions, and of the officers commanding stations, and of the staff-officers attached to them, as that of the provost-marshal does of the commander of the forces, and of the officers of the general staff."

To attend to different times and circumstances of cases.

14.—"They should attend particularly to the nature of the offences against *good order and military discipline*, of which the soldiers and followers of the army may be guilty, at different times, and under

that shall be plundering or marauding in the country or the villages; that is to say, all such persons as belong to the corps they are appointed for. Persons of all other corps or nations shall be made prisoners, and sent to the respective provost-marshal."

"All men guilty of *capital crimes* to be immediately sent to the provost."

"When any men are sent to the provosts, (viz. if those who confine them be not of the same regiment the prisoners belong to,) a report of them is to be sent immediately to the regiment they belong to; and no man to be received by the provost, except his *crime* be sent with him in writing."

"When any man is *executed*, a *label* is to be fixed on his breast, setting forth the crime for which he is executed." (*G. O. D. of Cumberland.*) (1745.)

(81) See note 78.

(82) The Duke on one occasion pardoned four soldiers for a highway robbery, owing to the gallantry of their regiments, (tried by general court-martial,) (*Coimbra, 30th September*, 1810,) p. 209; and three other soldiers, who had made every restitution in their power to the owners of the stolen property; and owing to the offences being (then) rarely committed, (*Port. Alegre, 27th July*, 1811,) p. 215; and one soldier, "because he told the *truth*, and thereby saved his comrades, who were, by mistake, charged with the offence of which he has been convicted." (*Frenada, 14th October*, 1811,) (p. 322, *D. of W. Ors.*)

different circumstances; and allow the *assistant-provosts* to *punish* them in a *summary manner*, only when committed under those circumstances when summary punishment may be necessary for the *sake of example*, and in which the *prevalent and continual commission* of the particular crime may be injurious to the public service." Summary punishments if caught in the act when for example.

15.—"The commander of the forces directs that it may be clearly understood, that no officer whatever has a right to order the provost-marshal, or his assistants, to exercise the authority intrusted to them; nor can the provost-marshal, or his assistants, inflict *corporal punishment* on any man, excepting they should see him *in the act* of committing a breach of orders and discipline. Their duty is, by *vigilance* and *activity*, to prevent those breaches which the commander of the forces is sorry to observe, are too common, and to punish those they may catch in the fact." (*G. O. D. of W. Principles of War, pp.* 288—290.) By corporal punishment.

16.—*Orders, &c. for the guidance of provost-marshals and their assistants.* (*G. O. Placencia, 16th July,* 1809.) "When the commanding general is unable to issue *wine* to the troops, either on account of the scarcity of the article, or of the difficulty of issuing it, he must not interfere in any manner with the *sale* of *wine* where the troops may be quartered, or in the neighbourhood. The *provost-marshal*, and his assistants, will in that case take care that *order* is preserved in the wine houses." (*G. O. D. of W. p.* 152, *Placencia, 16th July,* 1809.) Orders to provost-marshals *regarding wine-houses.*

2.—(*G. O. Talavera de la Reyna, 2nd Aug.* 1809.) "The soldiers *plunder* the inhabitants bringing in *provisions*, notwithstanding the repeated orders given upon the subject, and the knowledge which they all have, that this practice must tend to their own distress." (83) *Provisions not to be plundered.*

3.—"The commander of the forces desires, that particular attention may be paid to former orders, requiring, that no soldier should quit his lines, excepting on fatigue, in charge of an officer or non-commissioned officer; unless he is dressed according to the standing orders of his regiment, with side arms." No soldier to quit lines.

4.—"The *rolls* must be called in *camp* every two hours, and commanding officers of brigades will give directions what proportion of officers of each regiment are to be present. The *provost* and his *assistants* must *patrol* the neighbourhood of the camp constantly, and the assistants must relieve each other." (*Do. p.* 102.) Rolls to be called every 2 hours. *Provost-marshal and assistants.*

5.—(*G. O. Delytosa, 9th Aug.* 1809.) "The soldiers themselves render the difficulties of the moment greater than they would other- *Not to plunder provisions.*

(83) "No person bringing provisions to camp to be molested, or ill used; or any thing taken for their free passage." (*G. O. of Lord Stair.*)

wise be, by their irregularity, as they *seize* and *plunder* the mules, coming with *provisions*, by which the good and regular soldiers of the army are deprived of their just share of them."

Provost-marshal and assistants to find out the roads same by. Punished on spot.

6.—" The *provost-marshal* will ascertain, by what roads *provisions* are coming in; he will take care, that his assistants patrol those roads constantly, and any man caught in the *act* of plundering provisions, coming to the army, is to be punished on the *spot*, as such a heinous offence deserves."

Fatigue duties.

7.—" Soldiers not to quit their lines, unless dressed with their side-arms, excepting when on fatigue; all soldiers on *fatigue* must be under the command of an officer, or non-commissioned officer."

Roots and vegetables to pay for.

8.—" The practice of taking *roots* and *vegetables*, without paying for them, must be entirely discontinued; if roots, or vegetables, are required, they must be taken by regular parties, formed under the command of an officer, who must take care, and is responsible, the owner of the ground is paid for what is taken." (*Do. p.* 102-3.)

Bee-hives not to plunder.

9.—(*G. O. Jaracejo, 16th Aug.* 1809.) " The soldiers are again positively prohibited to plunder *bee-hives*; any man found with a bee-hive in his possession will be punished."

Provosts to patrol.

10.—" The *provost* must patrol in the neighbourhood of the camp; and every man found out of his lines, without his accoutrements, and not dressed as a soldier ought to be, is to be punished."

Commissariat guards on cattle stores relieved.

11.—The *commanding general* to send immediately to the adjutant-general's office a return of the number of men employed by him as *guards*, specifying whether upon *cattle*, or *stores*: in order that an arrangement may be made for their regular relief." (*Do. p.* 65.)

Women of the army.

12.—*Gen. Pass Order.* (*Medillen, 23rd Aug.* 1809.) " The *women* of the army must be prevented from purchasing *bread* in the villages, within 2 leagues (84) of the station of any division of the army. When any woman wants to purchase bread, she must ask the officer, of the company to which she belongs, for *a passport*, which must be countersigned by the commanding officer of the regiment. Any woman found with bread in her possession, purchased at any place nearer than two leagues, will be deprived of the bread by the *provost*, or *his assistants*, as will any woman who goes out of camp, to purchase bread without a passport."

Passports to buy bread.

Or no rations.

13.—" Women, who will have been discovered disobeying this order, will not be allowed to receive rations." (*Do. pp.* 103, 104.)

(84) " A league in *Spain* and *Portugal* is three English miles, (so in *England*,) although a long league in Portugal is certainly five miles."

" All green fruit brought to camp to be destroyed." (*G. O. D. of Cumberland.*)

Plunder of bakery of bread. Rolls every hour.

14.—" *G. O. Badajoz, 4th September*, 1809." (*Soldiers plundering a bakery, in town of Badajoz, and several houses of bread.*) "The commander of the forces is determined, however difficult it may be, to put a stop to it. The rolls are to be called on the different corps of the 4th division, every hour, till further orders; and he desires, that no soldier, whatever, may be allowed to quit his lines on any account, excepting in charge of an officer."

Provost-marshal to punish men out of lines.

15.—"The *provost* must punish all those found disobeying this order. A *guard* must be placed at the gate of the town of *Badajoz*, and all soldiers, attempting to pass in, are to be made prisoners, and sent to the *provost guard*." "The provost will forthwith turn out of the town all soldiers who may be in it." (*Do. pp.* 65, 66.)

Contractors protected, if comply with contract.

16.—*Contractors with exclusive privileges.* (*Selling tobacco, snuff, and soap, vested, by law of Portugal, in certain contractors, who are bound to sell those articles, of the best quality, at certain prices, regulated by their contract, applying to the Commander of the forces for protection.*) "The provost-marshal and assistant provosts, with the several divisions, are to prevent the sale of the articles, which are specified in the contracts, in the cantonments of the troops, by persons not authorized by the contractors, or their agents, to sell them, PROVIDED; 1st, that the contractors and their agents take care, that the supply of the articles is sufficient for the demand of the troops; and secondly, that the troops can always purchase them at the rates specified in the contract. If these two *conditions* are not strictly complied with, the commander of the forces requests the general, and other officers, not only *not* to *protect* the contractors; but to *encourage* dealers, of all descriptions, to attend the troops with these articles." (*G. O. D. of W. pp.* 105, 106.)

If not, to allow others to sell them.

Corn growing not to be cut for forage.

17.—*Corn growing.* (*G. O. Alameda, 17th April,* 1811.) "The *growing corn* has unnecessarily been cut, and otherwise consumed as *forage*, in the neighbourhood of the several cantonments." (Lt. Gen. Sir B. Spencer refers to 1st No. of G. O. 13th April, 1811, and requests officers commanding divisions, will direct &c.) "The assistant provosts to seize and punish any soldiers hereafter found cutting corn, without the permission of a commissary. To enable the issue of this authority, when expedient, regiments are to forage as much in the same district as possible. This caution is to be translated and given to the several *capitrazes* of Spanish mules attached to brigades, for the guidance of the muleteers." (*Do. p.* 252.)

Without permission of a commissary.

Plunder of towns.

18.—*Plunder of Towns.* (*A. G. O. camp before Badajoz, 7th April,* 1812.) 1. "It is now full time that the *plunder of Badajoz* should cease;

After storm request.

and the commander of the forces requests, that an officer, and 6 steady non-commissioned officers may be sent from each regiment, British and Portuguese, of the 3rd, 4th, 5th, and light divisions, into the town to-morrow morning at 5 o'clock, in order to bring away any men that may be *straggling* there."

Sent by provost-marshal. Execute any plundering.

2.—"The commander of the forces has ordered the *provost-marshal* into the town, and he has orders to *execute* any men he may find in the *act* of *plunder*, after he shall arrive there."

Order explained to troops.

3.—"This order is to be communicated to the Portuguese, as well as to the British troops." (*G. O. D. of W. p.* 69.)

Troops kept in camp. Roll call every hour

4.—*Troops kept in Camp.* (*G. O. camp before Badajoz, 8th April,* 1812, *at* 11 *o'clock P. M.*) "The rolls must be called in camp every hour, and all persons must attend, till further orders."

Passports.

5.—"Brigadier-general Power is ordered, and held responsible, that no British or Portuguese soldiers, excepting those belonging to the place, or having a *passport* from a field officer, shall go into *Badajoz*, till further orders."

6.—"The commander of the forces is sorry to learn, that the brigade in Badajoz, instead of being a protection to the people, plunder them more than those who stormed the town."

Troops in captured place under arms.

7.—"Brigadier-general Power's brigade are to be put under arms to-morrow morning, at day-light, and to continue under arms till further orders. The Brigadier-general is to send a state to head-quarters every six hours, of the number of men under arms, in the form of the daily morning states."

Fatigue parties.

8.—"The ladders in the counter-scarp, and scarp of the Fort are to be taken out of the ditch to-morrow morning, at day-light, by fatigue parties of Brigadier-general Power's brigade, and the Brigadier-general will report when this order is obeyed."

All officers to stop drunkenness and plunder.

9.—"The commander of the forces calls upon the staff officers of the army, and the commanding and other officers of regiments, to assist him in putting an end to the disgraceful scenes of *drunkenness* and *plunder* which are going on at *Badajoz*."

Provost-marshal, &c.

10.—"The *provost-marshal* of the army, and the *assistant provosts* of the several divisions, are to attend there to-morrow, at day-light, and throughout the day."

Guards at gate-way and breaches.

11.—"Brigadier-general Power is requested to place 50 men, with officers in proportion, on guard at the *gate* of *Elvas*, and another of the same number at the *breaches*; and to prevent soldiers from *entering* the town, or from *quitting* it, with bundles of any description."

None enter without a pass.

12.—"British and Portuguese soldiers are forbidden to go into Bada-

joz, and the *provosts* are to punish those they may find there, as being guilty of disobedience of orders; unless they should have *a pass*, signed by a field-officer, or the commanding officer of the regiment. (*G. O. D. of W. pp.* 69, 70.)

13.—*Forage.* (*G. O. Nave de Rey, 16th July,* 1812.) "The commander of the forces particularly requests the attention of the *commissariat*, attached to divisions, and brigades of infantry, and to regiments of cavalry, and of the general officers of the army, and commanding officers of regiments, to the orders which have been issued, regarding the cutting of forage." Forage grass, not straw of corn.

14.—"He desires, that whenever it is possible, *grass* may be given to the horses and other animals, instead of *straw* with *corn in the ear*."

15.—"The *assistant provosts* must be employed to prevent the *plunder* of *corn-fields*, and their destruction, by turning cattle into them." (*Do. p.* 255.) No cattle turned into corn-fields.

16.—*Plundering unripe grapes.* (*G. O. Cuellar, 1st August,* 1812.) "The commander of the forces requests that general officers, and the commanding officers of regiments, and of the depots at the several hospital stations, and the commanding officers of detachments on their march, will take measures to prevent the soldiers from plundering and eating unripe grapes." (84½) No unripe fruit.

17.—*Camp-followers and women plundering.* "The followers of the army, the Portuguese women in particular, must be prevented by the *provosts* from plundering the *gardens* and *fields* of vegetables; the women must be informed that they must obey orders, or they will be turned out of the army." No plunder of vegetables

18.—*Raw spirits.* "As much of the sickness of the troops is attributed to the use of raw spirits by the soldiers in the hot-season, the commander of the forces desires, that the officers will see that the men of each mess in their companies mix their spirits with four times the quantity of water, as soon as the spirits are issued by the commissary."(85) No raw spirits in hot weather—4 water.

(84½) "*Unripe grapes* prejudicial to health, (*G. O. 2nd October*, 1811,) p. 35, and *honey* at certain seasons, (*G. O. 2nd August*, 1811,) p. 199. Also, *onions*, growing wild; many of them poisonous. A Serjeant having died owing to eating them," (p. 35. D. W. Orders.) "In the Marquis of Hastings' army, in 1817, the *cholera* was attributed at first to eating unripe grain, and an order was issued to prevent it.

(85) Several instances of men dying in hospital, from excessive drinking. (*G. O. 4th June*, 1812, p. 35).

If orders not obeyed, will stop issue of liquor.

19.—"If the commander of the forces should find that the officers of any regiments omit to carry into execution this order, he will not only give directions that all issues of *wine* and *spirits* to such regiments may be discontinued entirely, but he will find himself under the necessity of taking other means to enforce obedience to *orders*, which have for their object the *health* of the *soldiers*." (86) (*Do. p.* 34.)

Discipline in enemy's country. *Dress. Side arms.*

20.—*Discipline in the field and cantonments in an enemy's country.* (*G. O. Abrantes, 17th June,* 1809.) "No dress-man of the brigades in huts must be allowed to quit the lines of his regiment without being dressed with his side-arms, (87) according to the orders of his regiment." (*G. O. Zarza Mayor, 5th July,* 1809.)

Fatigue duty.

2.—"Excepting when on fatigue duty, in which case, they must be in charge of an officer, or non-commissioned officer, according to their numbers." (*D. of W. Ors. p.* 40.)

Interior economy. Requires greatest attention.

3.—*Interior Economy.* "The commander of the forces wishes commanding and other officers of regiments, particularly the field-officer, to recollect that there is a great deal to do to keep their regiments in order on service, *besides* attending to the *parades* and *drills* of the men." "By *discipline* is meant *habits of obedience to orders; subordination; regularity;* and *interior economy.*" (*G. O. D. of W. p.* 30.)

Quitting ranks before enemy.

4.—*Quitting Ranks.* (*G. O. Elvas, 3rd June,* 1811.) "Any man who leaves his ranks in order to secure *prisoners* or *horses*, or any other articles captured, without orders from his commanding officer, must be brought before a court-martial, on a charge of disobedience of orders, *when before the enemy.* These orders must be read to every regiment in the army, at two different parades, and afterwards at the same periods with the Articles of War." (*G. O. D. of W. p.* 286.)

Plundering.

5.—*Plundering men put under stoppages.* (*G. O. Fuente Guinaldo, 10th June,* 1812.) "It is the duty of all officers to prevent the soldiers from plundering; and the commander of the forces calls upon them to perform it."

Stoppages from pay.

6.—"He declares his determination to punish *any person* who may be found plundering, on *any occasion*, and to make the soldiers give up

(86) "All men, who are found gathering beans, peas, &c. under pretence of rooting, to be hanged as marauders, without trial. This order to be read to every man." (*G. O. D. of Cumberland, 23th July,* 1745.)

"Commanding officers of regiments of foot may allow their men to go out for roots, sending with them a subaltern officer and 30 men, with arms. The officer to post such sentries as shall be necessary, to prevent the men from straggling or doing damage; and to take care to bring all the men back to camp." (*G. O. King Geo.* II.)

(87) "No soldier of the British to appear out of camp, particularly near Head Quarters, without side arms." (*D. of Cumberland's, 3rd July,* 1748,) p. 40.

any money, or other valuable articles, that they may have plundered." Property given up.

7.—"As these acts of outrage are generally committed by parties of men, the parties shall be put under stoppages, to make good the damage which they shall do upon any occasion." (88)

8.—"The commander of the forces will be sorry to be under the necessity of having recourse to any measure of severity, or restraint, to prevent these evils; and he is convinced, that the officers, non-commissioned officers, and the good soldiers, will do every thing in their power to restrain the ill-disposed, and to avoid the disgrace which must be the consequence of these continued irregularities and crimes; and he earnestly hopes, that there will be, in future, but little ground for complaint." (*G. O. D. of W. p.* 71.) Officers, &c. to restrain.

9.—*Stragglers.* (*G. O. Olmada, 28th July,* 1812.) "The number of soldiers of infantry, who stay behind their regiments on a march, is so very large, the practice is so unmilitary in itself, and leads to such inconveniences and losses, when the troops are moving near an *enemy*, and is at all times prejudicial to the *health* of the soldiers, that the commander of the forces begs to draw the attention of the general officers of the army to the general order upon this subject." *Stragglers.*

10.—"Under these orders, no soldier ought to be out of the ranks, on a march, without the *knowledge* of the officer commanding his company; and the officer commanding the regiment should report all *absentees*, at the end of the march, to the general officers commanding the brigades." Not leave ranks without leave. Commanding officers report absentees.

11.—"The commander of the forces declares his intention to have the name taken down of every soldier whom he may find *straggling* from his regiment on the march; and if he should find, upon inquiry, that the soldiers' names have not been reported, according to the G. O. of the army, he will bring to trial, before a general court-martial, the officer of his company, or the commanding officer of his regiment, if he should not have noticed the neglect of the commanding officer of his company." (89)

12.—"The commander of the forces requests the general officers commanding divisions, and the officers of the general staff, will pay attention to this subject." (*G. O. D. of W. pp.* 199, 200.)

(88) "When any thing is lost, stolen, or spoiled, on any guard, the whole shall pay for it, and the loser be punished with a month's drill." (*G. O. D. of Cumberland,*) p. 71.

(89) "No man to stir out of his platoon, or division, marching through towns or villages. The officer of the platoon, who suffers it, to be put in arrest." (*Marshal Wade's Ors. 22nd September,* 1744.)

Squads of non-commissioned officers one to each, answerable for conduct of men.

13.—*Squads of non-commissioned officers.* (*G. O. Coimbra, 29th May,* 1809.) "The commander of the forces desires, that the soldiers of every company, in each regiment, may be formed into as many *squads* as there are non-commissioned officers, each squad having one non-commissioned officer, who must be responsible for the conduct of the soldiers in his squad."

Quartered with them.

14.—"The non-commissioned officers must always be quartered with the men of their squads."

Officers to visit men 4 times halting, twice on marching days.

15.—"On *halting days,* an officer of each company must visit the quarters of the men of his company, *four times* each day, of which one must be at 8 o'clock in the *evening.* On *marching days,* an officer of each company must visit the quarters, *twice* after the men have got into them, of which one must be at 8 o'clock in the *evening.* An officer must also visit the quarters of the company, before the soldiers *march* in the morning."

And before marching off.

If men present. No complaints.

16.—"The object of these *visitings* is to see, that the soldiers conduct themselves *regularly* in their *quarters*; to ascertain whether there are any *complaints* by the *landlords,* and of whom; and that the men are in their quarters, instead of *marauding* in search of *plunder.*"

Reports of officers.

17.—"The officers of the company who will visit, must *report* to the commanding officer, that they have visited the quarters the number of times ordered, specifying the number."

Of commanding officers. Officers to be near their men.

18.—"The commanding officer will report *daily* to the officer commanding the brigade, that these visitings have been made. *The officers must be quartered in the immediate neighbourhood of their company.*" (*G. O. D. of W. pp.* 191, 192.)

Halting, bivouacking.

19.—*Halting, Bivouacking.* (*G. O. Alverca, 27th July,* 1810.) "When a regiment on its march is *halted* for any length of time, or, when halted, is *bivouacked,* the soldier must not be permitted to *sit* or *lie down upon the road,* but must be placed on one side of it."

20.—"The officers commanding detachments with *baggage,* or carriages of any description, the conductors of ordnance, or commissariat stores and the officers commanding regiments, are responsible for a strict obedience to this order." (*G. O. D. of W. p.* 195.)

Regiments disobeying to be sent into garrison. And reported to H. M.

21.—(*Alluding to G. O. 29th May,* 1809, *No.* 13, *ante.*) (*G. O. Leyria, 3rd Oct.* 1810.) "In either case, these regiments are unfit to do duty with the army; and if the commander of the forces should observe any more of this *straggling* on the march, he will send the regiments into garrison, and report their conduct especially to His Majesty." (*To be communicated to the Portuguese troops.*)

Returns of missing.

22.—"He also requests to have a return, this day, of the number

of men *missing* from each regiment, British and Portuguese, in the divisions, on each day's march, since the 1st instant inclusive."

Provost-marshal to punish stragglers.

23.—"General officers, commanding divisions, are requested to direct the *provost-marshal*, attached to their division, to punish any man who may be found *straggling* from the regiment and division to which he belongs." (90)

Packs inspected to take away plundered property, &c.

24.—*Packs inspected.* "General officers, commanding divisions, are requested to direct, that there may be an *inspection* of the soldiers' *packs*, both British and Portuguese, this day, after the march; and every thing, not strictly *regimental necessaries*, is to be taken from them, and burnt; and those, who have these articles, are to be punished, as they have certainly procured them by *plunder*."

Men not to enter towns.

25.—*Not to enter Towns.* "The troops not to be allowed to enter any town, unless necessarily obliged to pass through it, until further orders." (91) (*G. O. D. of W. pp.* 196-7.)

26.—"(*G. O. Aldea heula de Bovido, 16th November*, 1812.) Officers put in arrest for allowing men to *straggle*." (*Do. p.* 203.)

Troops quartered in towns.

27.—*Troops quartered in towns.* (*G. O. Madrid, 15th August*, 1812.) "The commander of the forces desires that all the officers, as well

(90) "Every officer, on a march, is to be answerable for the division, or platoon, before him, nor suffer any man to leave his rank. If any man has occasion to *ease* himself, or to go for *water* to drink, the officers are to make him give his firelock to some man in the same platoon, or division, with him," (*at times a N. C. O. is sent with him;*) "and if any man steps out of his rank, or slips into a house, passing through a town or village, with his arms, contrary to order, the commanding officer, besides punishing the offender, should oblige the serjeant of the division, or platoon, to carry some weak man's arms for one hour or more, for his neglect, in suffering a man of his platoon to escape, without his knowledge. For which reason, when there is but one serjeant in a platoon, he should be ordered in the rear of it during the whole march." (*General La Faussille. D. of Cumberland.*)

"Upon a march, each battalion to have a rear-guard of one subaltern and 24 men, which is to bring up all *stragglers*; and if any man should be so *ill* as not to be able to march, two careful men should be left with them, one of whom will come and acquaint the officer where such men have been." (*G. O. D. of Cumberland,*) p. 185; "but it was found impracticable to leave men with the *sick*, and take those to the nearest magistrate; and they were directed to be carried on till orders were issued for forming a general or brigade hospital." (*G. O. Abrantes, 26th June*, 1809,) p. 192.

"Upon the arrival of regiments in camp, the commanding officer of it is to *examine* into the *stragglers*, that did not come up with the battalion, and confine all those who cannot give a sufficient reason for so doing; in order to have them tried and punished for the same." (*G. O. of F. M. Wade,*) p. 189.

(91) "30 stragglers taken by the enemy in villages near the road." (*Alcobaça, 5th October*, 1810,) p. 197.

Officers put in arrest for allowing plunder. Portuguese as English, on duty in the palace of Retiro, since yesterday at noon, may be put in *arrest*, and their names reported, for having allowed the stores in that palace to be plundered, notwithstanding the orders they received, and that they and their men under their command were placed on duty there purposely to prevent the plunder."

Soldiers not to walk about streets without side-arms. 28.—"The commander of the forces ordered, on the 13th instant, that the soldiers should not be allowed to walk about the streets of Madrid, unless regularly dressed as soldiers, with their side-arms. It has always hitherto been understood, it was incumbent on the officers and non-commissioned officers of the army to see that the orders of the commander of the forces are obeyed; but he has seen soldiers walking with non-commissioned officer, in presence of officers, not dressed as ordered, and all kinds of *irregularities* going on in *presence* of, and *unnoticed* by, the officers."

Officers accountable for conduct of soldiers. 29.—"No army can continue long together, and successful, if orders are not strictly obeyed. And the commander of the forces holds the officers responsible for their soldiers; and in case of misbehaviour of the latter, he will call the former to account." (*G. O. D. of W. p.* 56.)

Care of wounded. 30.—*Care of wounded, and of arms, &c. after action.* (*G. O. Castroxeriz, 11th June,* 1813.) "The commander of the forces has frequently observed, that after an *action* with the *enemy*, large numbers of soldiers lose their *arms, accoutrements,* and *necessaries,* notwithstanding that this army has invariably remained in possession of the ground on which it has fought; whereby the public and the colonel of the regiment are put to a large expense, and much inconvenience is felt by the service, in a case on which the loss ought to be trifling."

Some can take care of their arms, &c. 31.—"In many cases, men, who are *wounded*, are perfectly capable of taking care of their own arms, accoutrements, and necessaries; and they should be ordered to do so by the *Surgeon* who will give them their first dressing.

Party after action to collect arms, &c. 32.—"The commanding officer of every regiment engaged with the enemy should, as soon after the engagement as possible, send an officer and 20 men over the ground over which the regiment may have marched, and on which it may have been engaged, in order to collect the arms, accoutrements, and necessaries, belonging to the regiment, which, when collected, must be taken care of."

Loss made good, if badly wounded. 33.—"In future, when a regiment will make a *claim* upon the public for the *loss* of arms, accoutrements, and necessaries, in *action*, it will be necessary to *prove* that the soldier, for whom a claim is made

for *loss of necessaries*, was so badly wounded, that he could not take care of his necessaries, and that the provisions of this order have been obeyed." (92)

Not too many men to take care of wounded.

34.—"The commander of the forces begs that it may be observed, that there is nothing in this order which authorizes the *detaching* of more soldiers to the care of *wounded* in action, than has been the practice hitherto. The commanding officers of regiments, and the officers and non-commissioned officers of companies, must take care that no man falls out of the ranks under *pretence* of taking care of the wounded, who are not ordered to fall out by the officer commanding the company, and this officer must take care that no more men are employed on this duty, than are absolutely necessary to perform it." (*G. O. D. of W. p.* 273.)

Safe-guards in villages.

20.—*Safe-guards.* (*G. O. Poinbeira, 18th March,* 1811.) "The commander of the forces requests the general officers, commanding divisions, will place *safe-guards* in the villages in the neighbourhood of their encampments, to prevent the soldiers from carrying off the *furniture*, poles of the *vines*, and other *property* of the inhabitants. The commander of the forces desires, that, at the same time with this order, the Articles of War, regarding forcing *safe-guards*, may be read to the troops." (*G. O. D. of W. Principles of War, p.* 60.) (93)

Videttes and out-sentries. Allow no one to pass their post.

21.—*Videttes.* (*G. O. Nave de Rey, 16th July,* 1812.) "In consequence of the number of *foreign* troops serving in the allied army, the practice of giving out a *parole* or *countersign* has been discontinued; but all *out sentries* and *videttes* should be particularly instructed to allow no person whatever to pass their post, after night-fall. All persons, attempting to pass their post, should be stopped, till the guard can be turned out, and each person can be examined. This order is referrible of course only to the out-sentries." (*Do. p.* 60.) (94)

No one to go beyond advance piquets.

22.—*Piquets, advanced.* (*G. O. Vera, 15th Oct.* 1813.) "The commander of the forces, requests that the general officers and commanding

(92) Certificate by Surgeon.

(93) "All safe-guards provided with orders for the security of house-hold goods, and effects within doors, shall be respected," (*See Arts.* 14.) (*D. of Cumberland's Orders, 8th July,* 1743.) Safe-guards were formerly paid "four puniscie skillings, for each, every 24 hours." p. 60.

(94) "All officers upon grand-guards, or detachments out of camp, who have sentries or videttes out, are to order them to stop all passengers at night, and detain them till the commanding officer of the said guard has examined them." (*G. O. D. of Cumberland, 8th May,* 1745).

Considered deserters. officers of regiments will give directions, that neither officers nor soldiers may be allowed to pass the *advanced piquets*, either for *forage* or *other purposes*. (95) Any non-commissioned officers or soldiers who do pass the advanced posts, and may fall into the enemy's hands, are to be considered as *deserters* in every respect; will forfeit all back-pay, if ever they should be released; and their length of service will not be counted." (*Do. p.* 61.) (96)

Sentries not to be struck. 23.—Guards and Sentries. (*G. O. Badajoz, 16th Sept.* 1809.) *Striking sentries.* (An officer striking a Portuguese sentry, and taking his bayonet forcibly from him, acquitted—insufficient evidence.)

Equally criminal of our own, or of our allies. Guards and sentries must be obeyed. 1.—"The commander of the forces desires, that all officers and soldiers of the army will understand, that the *Spanish* and *Portuguese* soldiers are entrusted with the performance of duties, when sentry, equally with *British* soldiers in the same situation; and that any *resistance* to a Spanish or Portuguese sentry, and particularly any *violence* committed upon him, upon any assumed superiority of character, by

"No soldier to go from his camp without leave from his officer, nor be absent all night without permission from the commanding officer; and all soldiers, found *straggling* beyond the grand-guards, shall be deemed *deserters*." (*G. O. D. of Cumberland, 30th June,* 1745;) p. 61. Deserters, *from enemy's lines.*—"When a deserter comes in from the enemy, the officer commanding the guard, or post, who takes him up, is immediately to send him to head-quarters, and not permit him to be examined, or asked questions, by any person whatsoever, till he is presented to the Commander-in-Chief." (*G. O. General Wolfe.*) The object is to prevent information being generally known: and an officer should be sent with him.

"*Servants* deserting from the enemy, to be brought to head-quarters; and if be found they have robbed their masters, they are to be sent back to the enemy's camp." (*G. O. Geo.* II.) provided they have not gained information: if they have, they should be retained; any property may be sent back."

"Any officer, or other person, that comes from the enemy's camp, to be secured by the first guard he comes to, till His Majesty's (viz. Commander-in-Chief's) pleasure be known." (*G. O. Geo.* II.) p. 64.

(95) "It is forbidden, on pain of death, to all soldiers, grooms, or followers of the army, to sell any forage; and the like punishment to those who buy *forage* belonging to the army." (*See,* 64. *Clause M. A.*) (*G. O. D. of Cumberland.*) "If it appears, that any soldier has offered to sell any horse, arms, &c. belonging to any of the corps in the army, he shall be hanged." (*D. of Cumberland,*) (*See Art. War,* 67.)

"No soldier to sell his wood, or sutler to buy it, on pain of punishment to both. Any man who is convicted of selling powder, ball, forage, ammunition, or bread, and the person who buys it, to be punished with the utmost severity." (*G. O. Geo.* II.) p. 293-4, see Art. War, 9.

(96) Art. of War, 30.

any British officer or soldier, will be punished, as such a breach of military discipline shall deserve." (*G. O. D. of W. &c. p.* 301.) (97)

2.—*G. O. Badajoz,* 29*th Nov.* 1809. "The commander of the forces requests the officers commanding regiments, to explain to both officers and soldiers of the battalions under their command, that it is equally criminal to *resist* a *Spanish* or *Portuguese* sentry, or guard, as it is to resist either belonging to the British army."

3.—"A guard or sentry must be understood, at all times, to be charged with the execution of the orders of a competent authority, at the place in which either may be stationed, or may be found, and must not be resisted on any account." Guard and sentence must be obeyed.

4.—"Guards and sentries may mistake their orders, or may execute them improperly, and in these cases *complaints* must be made; but on no account must they be resisted." (*Do.* p. 61.) If exceed, complain.

5.—*G. O. Santa Marinha,* 25*th March,* 1811. "The *guards and sentries* in the theatre are placed there to preserve good order, and to insure obedience to the rules of the theatre. The officers of the British army know that they dare not *insult* an *audience* in their *own country,* by any irregularities of conduct, or breach of rule; and the commander of the forces cannot allow those that are absent from their duty" (*sick officers*) "to be guilty of those irregularities at *Lisbon,* and to add to them the *military offence* of *violating* the public authority of a *sentry* and a guard." (*Do.* p. 299.) *Guards* and *sentries* of public places.

6.—*Patroles. G. O. Thomas,* 8*th March,* 1811. "General officers, commanding divisions, are requested to cause frequent patroles to be made, through the parts of the cantonments their regiments respectively may occupy, to preserve order." (*Do.* p. 48.)

24.—*Inhabitants, ill-conduct towards.* (*G. O. Abrantes,* 13*th June,* 1809.) Three men wounded by the peasants near Coimbra, and supposed to be dead. *Inhabitants, ill conduct to, forbid.*

1.—"This is one of the consequences of the *irregularities* of which the soldiers have been guilty, which have had the effect of turning into Turns them into enemies.

(97) "The character of a sentry is in all other services held *sacred,* and ought on all principles of public utility, to be considered so in this." (G. O. C. C. 30th January, 1816, *Hastings.*) An officer for striking a *sentry* and a *native* commissioned officer in Fort William was *dismissed* the service. "The duty of every officer to support, to the utmost of his power, the character of a sentry, more especially if sentries of the *native army,* who are, from a mistaken idea of respect, too prone to be remiss in the execution of their orders when opposed by an *European.* Such violation of discipline will ever meet with the severest reprehension." (Sentence confirmed, and officer sent to England.) (G. O. C. C. 22nd September 1827, *Combermere.*)

enemies a people, who were grateful for the benefits which they had received from the British nation, and manifested their gratitude by affording to the soldiers every comfort and assistance which was in their power. Commanding officers of brigades and regiments are particularly requested to point out to the soldiers the consequences of their irregularities." (*G. O. D. of W.* p. 52.)

Caution to officers newly joining the army.

2.—*G. O. Gavion*, 28*th Dec.* 1809. "The commander of the forces is concerned to notice, that *complaints*, of the conduct of some of the officers of the army to the *inhabitants* of *Portugal*, have already reached him, and he is convinced, that it must be of those who have lately joined the army, and were not partakers of the *kindness* with which the whole army were treated by the people of this country at the commencement of the campaign."

Civility and good treatment due to.

3.—"There is no doubt, that, by *civility and good treatment*, the officers of the army will receive from the inhabitants of *Portugal*, again, all the *assistance* and kindness which they can afford; and the commander of the forces is exceedingly anxious, that the people of this country should not be brought, by the *misconduct* of the army, to *detest* those, who are sent here to *assist* them in the *defence* of their country."

Orders sent to different departments on this subject.

4.—"He particularly desires that the officers, on the *commissariat* and *medical staff*, will pay attention to these orders, and that the commissary general will send a copy of them to each of the commissaries who are detached." (*Do.* p. 44.)

Soldiers murdered.

5.—*G. O. Mogoncillo, 6th August*, 1812, (*two British soldiers murdered at Medina del Campo.*) "The commander of the forces hoped, that the *kind* treatment, which the officers and soldiers of the army have received from the *Spaniards*, would have had the effect of inducing them to treat the *inhabitants* of the country with *kindness*; to respect their *property*; and to refrain from making *demands* upon them which they have no *right* to make."

Respect property.

Warning.

6.—"He now *warns* them of the consequences which will attend their *misconduct*. They may depend upon it that the *Spaniards* will not *submit* to be *ill-treated*; and the commander of the forces recommends to the soldiers, to behave towards the inhabitants of the country, as they have deserved by their conduct to the army since they have passed the frontiers of Portugal."

Do. orders printed and circulated.

7.—"This order is to be printed. It must be read to every detachment which will pass *Cuidad Rodrigo* and *Salamanca*; and a printed copy must be delivered to the officer or non-commissioned officer commanding it. And it must likewise be read to every detachment

which will leave the army for Salamanca, or will leave Salamanca to go to Coidad Rodrigo." (*Do.* pp. 201, 202.)

Prejudices respected. *Free masonry.* Contrary to law of Portugal.

25.—*Prejudices and National Customs. G. O. Coimbra, 5th July,* 1810, "As the profession of *free-masonry* is contrary to the *law* of *Portugal,* the commander of the forces requests, that the meeting of the *lodges* existing in the several corps, the use of *masonic badges* and *emblems,* and the appearance of officers and soldiers in *masonic processions,* may be discontinued, while the troops will be in this country." (98)

National laws to be respected.

2.—"The commander of the forces is convinced, that the officers and soldiers of the army will feel the *necessity of obeying* the *laws* of the *country* which they are sent to protect; and, that they will shew their *respect* for the attachment of the people of *Portugal* to *their own laws,* by refraining from an amusement which, however innocent in itself, and allowed by the law of Great Britain, is a *violation* of the law of this country, and very disagreeable to the people." (*Do.* p. 294.)

Flags of truce and communication with enemy's outposts.

26.—*Flags of Truce.* (*G. O. Celorico, 1st August,* 1810.)

1.—"The following orders and rules are to be observed respecting communications with the enemy's outposts."

2.—"No *flag of truce* must be sent to the enemy, without orders from the commander of the forces."

3.—"No *letter* or *other communication* must be sent by a flag of truce, which has been ordered by the commander of the forces, unless such letter has been first transmitted to head-quarters, and it must be open."

Letters from Receipts given.

4.—"*Flags of truce* from the *enemy* must be received by the officer commanding the first post, at which they will arrive. The officer, commanding the post, is to receive the flag of truce, or officer coming with it; to take from him the letter, or communication, with which he

(98) Two officers were tried and dismissed the service for hesitating and declining to fire salutes at Fort St. Angelo, (Malta,) customary on certain ceremonies relating to the *Roman Catholic* Church; owing to religious principles. (*G. O. H. G. 12th October,* 1824.) (pp. 645—8, Practical Courts Martial). H. R. H. observed, that ("obedience is the first duty of a soldier.") When *Naaman,* Captain of the Host of the King of Syria, accompanied his master to worship in the house of Rimmon; although *he* had recently promised to offer neither burnt-offering nor sacrifice unto other gods, but unto *the Lord,* and when by reason of his master's infirmity *he* was obliged to bow down to support him, (whilst he leaned on *his* hand,) but not to worship, he asked pardon, which he received, (2 *Kings* v. 18, 19.) It was *Naaman's duty to attend.* (*See also Col.* iii. 22. *Tit.* iii. 1.)

will be charged, and to give him a receipt for it; and he is then to send him back again to his own lines." (99)

Not to converse with.

5.—"The simplicity and indiscretion with which communications have been made to the enemy, respecting the positions, &c. of this army, render these orders absolutely necessary; and the commander of the forces trusts, that the officers, commanding at out-posts, who may have to receive the enemy's flags, will confine their conversation entirely to the subject on which they are to communicate, *viz.* the *receipt* of the *letter* or *message*, from the enemy, and the immediate departure of the officer delivering it." (*G. O. D. of W.* p. 63.)

Correspondence of officers from the army to friends.

27.—*Correspondence relative to the positions and movements of the army improper.*

(*G. O. Celorico, 10th August,* 1810.) 1.—"The commander of the forces will not make any inquiry to discover the writer of the letters which have occasioned this unnecessary alarm, in a quarter, "(*Oporto*)" in which it was most desirable it should not be created. He has frequently lamented the ignorance which has appeared in the opinions communicated in letters written from the army, and the indiscretion with which these letters are published."

Alarms.

Opinions erroneous.

2.—"It is impossible, that many of the officers of the army can have a *knowledge of facts*, to enable them to form *opinions* of the probable events of the campaign; but their opinions, however erroneous, must, when published, have mischievous effects."

Communications as to our numbers, disposition, &c.

More mischievous than opinions.

3.—"The communication of that, of which all officers have a knowledge, viz. the *numbers* and *dispositions* of the different divisions of the army, and of its *magazines*, is still more mischievous than the communication of *opinions*, as must be obvious to those who reflect, that the army has been for months in the same position; and, it is a fact, come to the knowledge of the commander of the forces, that the *plans* of the *enemy* have been *founded* on the information of this description extracted from the English news-papers, (100) which infor-

(99) He is blindfolded, to prevent his seeing the positions, disposition, and strength of the army, &c. They are usually escorted back.

(100) The English and French general officers used to exchange news-papers. The French gained, because the censorship of the French papers never allowed the real truth to appear; the *Moniteurs* were either framed by Buonaparte, or by those acting under his directions: whereas the *opposition* English papers exposed what they conceived to be the errors of the ministry; hence the French gained. It is said by *Bourienne* (*Private Secretary*), that Buonaparte had a paid *spy* as a clerk in the Austrian War Office, who gave him information of every movement of the army, or any increase, &c. made to it!

mation must have been obtained through private letters from officers of the army."

4.—"Although difficulties, inseparable from the situation of every army engaged in the operations of the field, particularly in those of a *defensive position,* are much aggravated by communications of this description; the commander of the forces only requests, that the officers will, for the sake of their own reputations, avoid to give opinions upon which they cannot have a knowledge to enable them to form any, and if they choose to communicate *facts* to their correspondents, regarding the *positions of the army,* its *numbers,* formation of the *magazines, preparations* for breaking bridges, &c. they will urge their correspondents not to publish their letters in the *news-papers,* until it shall be *certain* that the publication of the *intelligence* will not be *injurious* to the army, or the public service." (*G. O. D. of W.* pp. 396-7.)

Should not be published till the knowledge is useless to the enemy.

SECTION 23.—CARRIAGES AND TRANSPORT OF STORES, SUPPLIES, AND BAGGAGE OF THE ARMY ON SERVICE.

(*G. O. Oporto.* 23*rd May,* 1809.) 1.—("Detailing the impracticability of using *bullocks* for officers' baggage, and quite impossible in large divisions.") "The commander of the forces is aware, that in *forced marches,* and in *bad weather,* it may happen that animals provided for carriage will knock up, but hopes that officers of the army will consider it as a determined measure, that no baggage is to be carried upon *bullock cars,* (101) excepting those allowed by the late commander of the forces; (102) and that those, who have baggage to carry, *must* be provided with *mules* or *horses.*" (*G. O. D. of W.* p. 204.)

Bullocks bad. Mules used.

No carts except for the sick.

2.—(*G. O. Coimbra, 29th May,* 1809.) *No guards with* "the use of *carts* to carry baggage of any description is, again, positively forbid; and it is equally forbid to have *guards* with any baggage." (103)

No guards with baggage.

3.—"No soldier must be employed to *press carts* or *bullocks* for draught or food, excepting accompanied and directed by the assistant commissary of the brigade, or his deputy or clerk, except in cases of evident necessity; when the commanding officer of the brigade, in the

Not to press carts or bullocks except by commissary, and then reported.

(101) "If any country wagon is found with any corps, unless it is allowed them, the commanding officer of it will incur H. R. H.'s displeasure." (*G. O. D. of Cumberland, 2nd May,* 1745.)

(102) "One cart for each regiment to carry men who may fall sick on a march. (*Coimbra, 29th May,* 1809.)

(103) The rear-guard takes care of all baggage, when it does not march with the army.

absence of the assistant commissary, may direct that carts or bullocks for draught or food may be pressed, in which case an officer must command the party; and the officer commanding the brigade must report the circumstance, as soon as possible, to head-quarters." (*Will send troops disobeying into garrison, and report to H. M. Apply to the dragoons and artillery.*) (*G. O. D. of W.* pp. 205-6.)

Baggage destroyed if found on carts and officer tried.

4.—*Baggage destroyed, &c.* (*G. O. Celorico, 29th July,* 1810.) "If, hereafter, a cart drawn by bullocks is seen in any part of the line of march of the troops, orders will be given that the *baggage* shall be *destroyed,* and the officer to whom it belongs will be brought before a general court-martial." *G. O. D. of W.* p. 195.)

Pressing punished.

5.—*Pressing punished.* (*G. O. Celorica, 4th August,* 1810.) "*A conductor of stores pressing carriage.* Report to be made by commanding officer of artillery for what occasion pressed, and strict inquiry, whether before pressing, the conductor made *application* to any British *commissary* or *magistrate* of the country." (*G. O. D. of W.* p. 217.) (104)

Not allowed by military, except in extreme cases. Refusal, &c. of magistrate.

6.—*Not to press, apply to a magistrate, and report; except in urgent cases.* (*G. O. Frenada, 1st December,* 1811.) "Officers have no more right to press in *this country,* than in *England.* The exigence of the service can seldom be of a nature to require that an officer should take upon himself to *embargo,* or *press* means of transport, or articles of supply, &c. without the intervention of a magistrate; and any officer who does take upon him such an authority, will be obliged to *prove,* that the *service* rendered such an assumption of authority necessary, and that the *magistrate* to whom he had applied, had *omitted,* or *refused,* to perform his duty: he must, in that case, go himself in command of the party, which will be employed to embargo and press what is required, and he will in this, as in every other case, be held responsible for the conduct of the non-commissioned officers and soldiers under his command."

Commissariat cannot press.

7.—*Commissariat.* "The commander of the forces likewise requests the attention of the officers of the *commissariat* to these orders, and he desires that they will understand, that they have *no more authority* to *embargo,* or *press* anything for the service, than any other officer of the army. If they *cannot* procure what they require by *hire,* or *purchase,* they must apply to *a magistrate;* and if the magistrate should *refuse,* or *omit,* to perform his duty, they must make a *report,* in writing, specifying all the circumstances; and if the *necessities* of the

Apply to magistrate, and report if not supplied.

(104) See clauses 55 to 63, M. A.

service require that they should proceed, on their *own* authority, to press or embargo by *military force*, an officer of the commissariat must proceed with the party." (Copy of this order to be given to every officer commanding a detachment, marching from the army, or from Lisbon.) (*G. O. D. of W.* pp. 218, 221.) (105)

SECTION 24.—CONVOYS. (*G. O. Coimbra, 3rd May*, 1809.)

Convoys. Reports of march to quarter-master general and officers commanding posts, &c.

1.—"Whenever *stores* or *provisions* are despatched from *Lisbon*, the quarter-master general is to be informed thereof, of the number of *wagons*, and other means of *conveyance* on which they are laden, and of the *route* which they are directed to take, specifying by what stages. The *Town-major* is likewise to give notice of this despatch to the officer at *Rio Mayor*; this officer is to relieve the escort, and send it back to Lisbon, and is to report the arrival, and the probable departure, of the convoy, to the quarter-master general, and the officer commanding at the next station; (106) the officers stationed at *Leiria* and *Coimbra* are to do the same respectively."

Non-commissioned officers answerable for conduct of men.

2.—"Non-commissioned officers, in charge of convoys, will be held responsible for the conduct of the soldiers under their command, on the march with convoys, and returning to their cantonments." (*G. O. D. of W.* p. 237.)

Halted. Loads packed but not in streets, or on roads.

3.—*When halting.* (*G. O. Alverca, 27th July*, 1810.) "All carriages and loaded animals, on their march, must, when halted, if only for a short time, be packed in a field, in the neighbourhood of the high-road, or housed, but must not, on any account, be left in the streets of any village, or on the road. (Officers commanding detachments with *baggage*, or *carriages* of any description, or *commissariat* stores, and officers commanding regiments, are responsible for strict obedience to this order.") (*G. O. D. of W.* pp. 194-5.)

Baggage landed from transports.

SECTION 25.—BAGGAGE ON FOREIGN SERVICE. (*G. O. Abrantes, 10th June*, 1809.) 1.—"Landed from transports the baggage of the army to be immediately disembarked from the transports in the *Tagus* and placed in store. Each regiment to send an officer, or careful non-commissioned officer, to superintend the removal of the baggage of each regiment, to the store-house allotted to receive it." (Report to assistant quarter-master general.)

(105) A quarter-master suspended for seizing without orders. (*G. O. 19th July*, 1811,) p. 315.

(106) The object is to have relief of guards ready; and to enable troops to march to assistance, if required: for, sometimes, an army falls back on its supplies, or detaches a strong force to protect them.

Charge of. 2.—*Charge of in Store.* "To be left in charge of a non-commissioned officer, or a steady private soldier of each regiment, rest of the party to return to the army." (*G. O. D. of W.* p. 233.)

Examination of nature (to prevent contraband articles being landed) of No. and description of articles. 3.—*Examination.* (*G. O. Badajoz, 8th September,* 1809.) "Notice of the contents of the baggage to be given one day before landing, by the officer of the department, &c. to which belonging, for examination, to prevent articles liable to duties being landed, to the officer commanding at *Lisbon,* stating the ship from which, and the place to which, on shore, the articles are to be taken; the denominations and quantities (if possible) of the articles to be landed.

Notice to ambassadors, &c. and custom-house officers. 4.—*Notice to Civil Authorities.* "The commanding officer at *Lisbon* is immediately to convey this *notice* to His Majesty's ambassador at Lisbon, for the information of Government *Custom-house* officers to be allowed to attend in the ship; in the boats conveying the articles from the ship to shore; and in the store-house, to see that goods are conveyed to their destination according to notice." (107). (*G. O. D. of W.* p. 234.)

Superfluous baggage destroyed. 5.—*Superfluous Baggage.* (*G. O. Celorico, 30th March,* 1811.) Complaints of agents of transports, of the great quantity of baggage on board transports of regiments, (*old clothing, empty boxes, and packing cases.*) "The commander of the forces requests commanding officers of regiments, to send to *Lisbon* an officer of each regiment, to *arrange* the baggages, and to destroy such as may be *useless,* or of the description above referred to." (*G. O. D. of W.* p. 234.) (108).

Heavy baggage sent to England. 6.—*Heavy baggage sent back to England.* (*G. O. Quinta, in front of Elvas, 3rd June,* 1811.) *The regiments left regimental depôts at Portsmouth.*) "Commanding officers of regiments to give directions to the officers sent to Lisbon, to select the necessary baggage of regiments and of individuals, and apply to the assistant quarter-master general at Lisbon, for tonnage to send the *heavy* baggage to *Portsmouth* to the *stores* of the *store-keeper-general,*" (each package to be marked —— "regimental baggage of ——— battalion —— regiment, to be lodged in the stores of the store-keeper-general.)

Apply for tonnage to assistant quarter-master general.

(107) A custom-house officer is sent on board E. I. C.'s ships before sailing from England, and an officer's baggage is sent to the custom-house on arriving in India, at Calcutta, &c. There should be a regulation both in England, and in India, to allow of officers landing, free of duty, any professional instruments, or books. An officer, in England, has paid duty for a pair of pistols!

(108) Baggage should be inspected before embarkation. For officers going on foreign service from India; (*baggage and servants,*) see G. O. C. C. 9th February, 1811. *Henley,* p. 19.

7.—"Officers commanding regiments to report to the quarter-master general, what articles of regimental baggage they will retain at *Lisbon*, for their regiments." (*G. O. D. of W.* pp. 235-6.) Report to quarter-master general.

8.—*Private Baggage.* (*G. O. Niza*, 15*th April*, 1812.) "No carts for private baggage. Carts not to be overloaded. Soldiers' knapsacks to be examined; and all unnecessary articles to be destroyed." No carts for private baggage. Knapsacks examined.

9.—"When troops, in the same or neighbouring cantonments, or same column, are to *separate* on the *march*, the officer commanding each column, &c. to send a steady non-commissioned officer at the *point* of separation, in order to direct the baggage to follow the right road." (*G. O. D. of W.* p. 223.) (109) Troops marching different roads.

10.—*When near an Enemy.* (*G. O. Fuenta de la Pena*, 17*th July*, 1812.) "All *baggage* and *stores* of all descriptions must be packed every evening at sun-set, and must be placed in a convenient situation out of the town, except the baggage of the general officers who may reside in the town; and the *animals* to carry the baggage must be near it. All baggage and stores, every morning at the hour the troops turn out, must be loaded till the troops shall be dismissed." (*G. O. D. of W.* p. 267.) When near an enemy. Packed outside. Of towns, &c. Cattle near.

11.—*Order of Baggage on a March.* (*G. O. Quincoces*, 17*th June*, 1813.) "When more than one division of infantry or brigade of cavalry march upon the same road, from the same camp, the baggage of each should follow it; unless otherwise ordered. When the *country* is *open*, two or more divisions of infantry or brigades of cavalry, moving from the same camp, are to march half an hour after each other: when the country is *close*, they are to march one hour after each other." Order of baggage on a march. And time of moving off in open and close country.

Order of march of baggage: unless otherwise directed. Order.

1st.—Oxen, for the day provisions.

2nd.—Wheel-carriages, drawn by horses or mules.

3rd.—Ditto by bullocks.

4th.—Mules, with ammunition.

5th.—Baggage of staff of divisions of brigades of cavalry.

6th.—Camp kettles, or tent-mules, and the baggage of officers of regiments, in the order by regiments, in which they stand in column.

7th.—Commissariat, upon mules.

(109) "When the army marches, a captain from the whole foot, a subaltern from each brigade, and a serjeant and 10 men from each battalion, to be commanded with the wheel-baggage. The captain and officer commanding are to take care that the detachment never lay their arms on the waggons, that servants do not stop the line of baggage to drink, or on any other pretence, and that no women

Ready to march with the army. "All bullock carts, and droves of oxen, except those required for the day's supply for each division or brigade of cavalry, are to follow the whole column, which will move from the same corps." "Officers are to take care, that all the baggage is ready to start at the hour appointed for the march of the division." (*G. O. D. of W.* pp. 211, 212.)

SECTION 26.—DESERTERS, MISSING MEN, PRISONERS OF WAR.

Deserters. *Desertion to the Enemy.* (*G. O. Lezoca, 4th October,* 1813.) 1.—"It is well known, that nobody can trust men guilty of so base a crime; and notwithstanding the enemy's promises, those who have been guilty of it are employed only in *services* of the *lowest* and *most laborious description;* they are despised and shunned by all, even by those who profit by their crime, and the soldiers who are prisoners of war will hold no communication with them."

Employed in laborious services by enemy. Become prisoners of war.

2.—"It is known to the commander of the forces, that some soldiers, who, in an unguarded moment, have been induced to quit their colors, have found themselves in so *miserable* and *degraded* a *state,* as to be desirous of being considered *prisoners of war,* and have preferred to remain in it, to incur the risk of the punishment which awaits them if ever they should come under the power of any British authority." (*G. O. D. of W.* p. 26.)

Prisoners of war and missing men. 3.—*Prisoners of War and missing Men.* (*G. O. Frenada, 22nd December,* 1811.) "Struck off and returned as such in the returns, in the column of *men discharged,* not included in the *daily* or *weekly* states." (*Do.* p. 27.)

Stoppage of pay. While in enemy's hands. 4.—*Prisoners of War.* (*G. O. Alverca, 26th July* 1810.) *Stoppage of Pay.* "While they remain prisoners in the enemy's hands. From each non-commissioned officer and soldier 6*d.* a day to be stopped from the full pay, from the day of his being taken up, to that on which he should actually regain a British corps." (*Do.* p. 143.) (110)

5.—*Officers Prisoners of War.* (*Letter H. G. 22nd January,* 1811.) "Still to be borne on the strength of regiments, though they may have been replaced by other officers, and returned accordingly." (*Do.* p. 28.)

be permitted to ride on the forage waggons." (*Clause M. A.* 63; or any soldier, servant, or woman on *any* carriage, unless *sick.*)

"The horse and dragoons to have an officer of each brigade, and one man per troop, with the same orders, p. 215. General La Faussille recommends *signals* to give notice of stoppages, p. 213, and the D. of W. ordered five minutes' halt every hour and half, for the men to fall out." *G. O. Coimbra, 3rd May,* 1809, p. 185.

(110) See Art. of War, 82.

SECTION 27.—QUARTERS AND CANTONMENTS IN AN ENEMY'S COUNTRY. ORDER. CLEANLINESS. (111)

Quarters, and cantonments in an enemy's country.

Quarters for Officers in Lisbon. (*G. O. Lisbon, 14th March,* 1809.)

1.—"All general officers and heads of departments will apply, and receive the billets from the deputy quarter-master general."

2.—"All other officers are to receive their billets from the town-major."

3.—"No officer, quitting Lisbon, is to retain his quarters; he must give back his billet to the department from which he received it."

Not to select.

4.—"No officer is, on any account, to select any particular house, nor to choose his own quarters; all that they can expect is, that each shall be provided with a quarter suitable to his rank." (112)

According to rank.

5.—"Colonels will be entitled to four rooms, field officers three, captains two, subalterns one room each. Staff officers will have quarters allotted them, according to the comparative rank they hold in their several departments, civil or military."

6.—"No officer, under the rank of a general officer, is to require more than two servants' beds at the most."

Not to deliver over billets.

7.—"No officer is, on any account, to deliver over his billet to another."

Or exchanged without leave.

8.—"No billet is to be exchanged for any officer, of any rank, without previous application to the deputy quarter-master general. If under the rank of a general officer, to apply to the town-major, who will explain to the deputy quarter-master general the cause of the application."

No furniture.

9.—"No officer whatever to require any thing more than his lodgings, where he is billetted." (113)

Billets to specify rank.

10.—"The town-major, in applying to the *intendant general* (114) for billets, is to specify the several ranks for which they are required, and if they are for staff officers, he will indicate the comparative rank held by them."

If no billets, to apply.

11.—"All officers whatever, who have got into houses without regular billets, are to send in their names to the deputy quarter-master

(111) Similar regulations will apply to any town or place where there are quarters.

(112) And according to Brevet or army rank, if in command in virtue thereof; but a brevet major, doing captain's duty with his regiment, as captain.

(113) "Bed or furniture, as a matter of favor." *Badajoz, 13th December,* 1809, p. 44, see note 118.

(114) "General list of officers and their quarters delivered to the superintendent of police. (*Badajoz, 20th October,* 1809.) See *Billetting,* Art. of War, 37.

general, that billets may be either made out for the present quarters they now occupy, or other quarters allotted to them." (115)

(Signed) A. Walsh, *Lieut-Col. Town-major.*

(*G. O. by Lieut-General Sir J. Craddock, late Commander of the Forces, adopted by the D. of W.* pp. 41-3.)

No firing in quarters.

12.—*Firing off pieces prohibited in quarters, officers to attend to their men in.* (*G. O. San Pedro, 19th May,* 1809.) "The practice of soldiers of firing off their pieces in quarters, but by order of their officers, is strictly forbid." (116)

Officers to attend to men in.

13.—"Officers of companies must attend to their men in their quarters, as well as on a march." (*G. O. D. of W.* p. 51.) (117)

Quarters in smaller towns.

14.—*Quarters in smaller towns and villages.* (*G. O. Gavion, 28th December,* 1809.) "The commander of the forces requests officers commanding divisions to direct the officers of the quarter-master general's department attached to their divisions, to arrange with the *magistrates* of the different *towns* and *villages* in which the troops may be cantoned, in what houses general officers, field officers, captains, and subalterns, shall be quartered; and the officers are to be quartered according to this arrangement." (*G. O. D. of W.* p. 44.)

Quarter-master general's department to arrange with magistrates.

And receive quarters from them.

15.—(*G. O. Fuente de Guinaldo, 14th September,* 1811.) "The officers of the quarter-master general's department, or the quarter-masters of regiments, must in every case, in which they require quarters for officers or soldiers, receive them from the *magistrates* of the towns or villages, and afterwards allot them to the several regiments, or to the several officers and troops, as the case may be."

And allot them to regiments, &c.

(115) See note 119.

(116) See Art. of War, 16. See G. O. 29th July, 1809, p. 64. "If any guard or regiment hears firing of arms in the neighbourhood, they are to send out immediately to know the person, and the cause of it; if soldiers without leave, they are to be made prisoners, and reported to the commanding officer." (*G. O. D. of Cumberland,*) p. 265.

(117) "The object of these visitings is to see, that the soldiers conduct themselves regularly in their quarters, to ascertain whether there are any complaints by the landlords, and of whom, and that the men are in their quarters, instead of marauding in search of plunder." (*G. O. Coimbra, 29th May,* 1809,) p. 191. Also "the inspection of soldiers' necessaries, and particularly their arms and ammunition." (26th September, 1812.) p. 58. "Complaints against *landlords* to be made to the quarter-master general's department." *Badajoz, 5th December,* 1809,) p. 52. "In foreign quarters, an officer of a company should visit the men's quarters every day, and see that they turn their mattresses, and inspect narrowly into any damage; which is easily repaired at first, and at a small expense, but charged at a great price if left to the magistrates." (*G. O. of General La Faussille,*) p. 50.

16.—"No officer has a right to demand more from his *landlord* than house room, if the building should afford any; and it is obvious that in no town in *Portugal* or *Spain* can officers expect the accommodation allowed at *Lisbon* (118), and they must be satisfied with what the town or village can afford. Every accommodation and comfort beyond *houses* and *stable-room*, must be the result of the good will of the inhabitants, and nothing like *compulsion* must be used. Houses not to be seized by *individuals*." (*G. O. D. of W.* pp. 46-7.)

Nothing but houses and stabling.

Nothing seized.

17.—*Names on Doors.* (*G. O. Zarza-Mayor, 4th July,* 1809.) "General staff and other officers are to put their *names* on the *doors* of the houses in which they are quartered." (*Do.* p. 38.) (119)

Names on doors.

18.—*Register of Billets.* (*G. O. Badajoz, 17th September,* 1809.) "Officers to apply for quarters at any of the stations of the army or at head-quarters, to the officer of the quarter-master general's department at such stations, or to ——— at head quarters. The officers of the quarter-master general's department, at the *other* stations, to keep a *register* of the *names* of the officers for whom they procure billets, and of the *owners* of the houses; that it may be always known what officers have been quartered in each house." (*Do.* p. 40.)

Register of billets.

19.—*Landlords.* (*G. O. Badajoz, 5th December,* 1809.) "Officers having any complaint to make against their *landlords*, to do so to——— of the quarter-master general's department, and by no means to take into their own hands the redress of any complaint against any person. The troops *quartered* in Badajoz are *not part* of the *garrison* of the fort, and have nothing to do with its duties." (*Do.* p. 152.)

Landlords. Complaints against, apply to quarter-master general's departmnet.

20.—*Deprived of Quarters.* (*G. O. Frenada, 4th March,* 1812.) "The commander of the forces' intention to order, that the whole should inhabit their tents, if he should receive any reports of disagreements with the *inhabitants*, or of unreasonable demands on the part of the officers above-mentioned (medical officers, and officers about to be removed into hospital at *Santarem*.") (*Do.* p. 48.)

Deprived of quarters, if quarrel with.

21.—*Hospitals.* (*G. O. Vera, 22nd October,* 1813.) "Houses must not be taken under the authority of *individuals*, whether for *hospitals*, or for quartering officers or soldiers. In all possible cases an officer of the quarter-master general's department must distribute and allot quarters; and where there is a magistrate, must apply to

Hospital, apply to magistrate for, if one.

(118) See note 113.

(119) "Heads of departments, &c. on changing quarters, to send their addresses to the adjutant-general, &c. (*Placencia, 9th July,* 1809,) p. 100. Other officers, to assistant adjutant-general of divisions, &c."

him, and obtain billets, or make the allotment in common with him." (*Do.* p. 48.)

Damage to quarters. Stoppages and punishment. 22.—*No damage to quarters, property not to be injured.* (*G. O. Cartaxo, 26th November,* 1810.) "General officers and commanding officers of regiments to prevent soldiers using the *doors* and *windows*, and pulling down the *timbers* of *houses*, for *firewood.* The consequences will be, that the soldiers will be without quarters, besides the serious injury to the inhabitants." (120) (*Do.* p. 53.) "Nor destroy furniture or materials of houses." (*G. O.* 12*th December,* 1810.) (*Do.* p. 54.) "Nor *beams*, &c. of the roofs of convent, or other buildings." (*G. O.* 16*th February,* 1812, *p.* 55.) "Nor floors, nor staircases, nor gates of farms, &c. (*G. O.* 18*th December,* 1813,) p. 50.

Troops hutting. 23.—*Troops hutting themselves.* (*G. O. Abrantes,* 13*th June,* 1809.) "*Olive* and other *fruit* trees not to be used for hutting, except in cases of evident necessity." (*Do.* p. 39.) "Officers of regiments in huts must be encamped with the men, except those whose health requires them to remain in houses." (*G. O. Placencia,* 9*th July,* 1809.) (*Do.* p. 38.) (121)

Officers with men: unless sick.

Cleanliness in cantonments. 24.—*Cleanliness in Cantonments.* (*G. O. Port Alegre,* 28*th July,* 1811.) "1.—Cantonments to be kept clean and healthy."

Offals. 2.—"The *offals* of animals killed to be destroyed by slack (*quick*) lime; if not procurable, to be buried." (122)

(120) "If any soldier is found taking wood, straw, or any thing else, out of any house, without an officer is present, he is to be punished immediately at the head of his corps." (*G. O. D. of Cumberland, 2nd April,* 1747,) p. 54. "The commander of the forces now declares his intention of ordering, that, when any building shall be destroyed by the soldiers of the army, it shall be repaired, and the expense of the repairs shall be charged against the subsistence of the regiments or detachments, which shall be quartered in or near the building, which shall have been destroyed." (*G. O. Frenada,* 16*th February,* 1812,) p. 56. (With regard to damage done to barracks or furniture, and for recovering the amount, and replacing or repairing damaged articles.) (G. O. G. G. 2nd June, 1819, pp. 248—50, and 16th January, 1824, p. 41.) "Two soldiers ordered to be hanged, being caught in the fact of shooting pigs." (*G. O.* 16*th November,* 1812,) p. 202.

(121) "Halted every day when practicable." (*G. O. Abrantes,* 26*th June,* 1809,) p. 192. "The troops were during the hot-weather, when near the enemy, and practicable, to be cantoned in a town during the day; but invariably out of it at night." (*G. O. Fuenta de la Pena,* 17*th July,* 1812,) p. 266.

(122) "Commanding officers of regiments to be answerable that their butchers bury their garbage; and cleanliness in every respect is strongly recommended." (*G. O. D. of Cumberland,* 18*th June,* 1745,) p. 49; and, as applying to cantonments also, particularly when *halted* for any length of time. "The parade and streets of the camp are to be cleaned every morning, and the tents to be opened or struck and

3.—"One or more necessaries to be made for each regiment, to which all the men must go; and slack (*quick*) lime should be thrown into them every second day." Necessaries.

4.—"The streets of each regiment, and the communications with them, to be swept every morning, and the heaps of *dung* and *filth*, in the unoccupied spaces in all the towns in Portugal, should be destroyed by slack-lime." Streets clean.

5.—"Sentries to be placed over the *fountains* in the towns, to prevent persons dirtying the water, or from accumulating dirt in the neighbourhood." Sentries over water.

6.—"The commissaries of brigades to procure a quantity of slack (*quick*) lime; and quarter-masters of regiments to make requisitions for it." (*Do.* p. 49.)

7.—*Houses visited constantly.* (*G. O. St. Jean de Luz, 18th December*, 1813.) "Every house or other building, inhabited by the troops, to be visited constantly (123) by officers of companies. All wet straw and other dirt to be removed. Fern or other materials, which the soldiers have collected to lay upon, to be rolled up, and the floor swept. In dry weather, the blankets, &c. to be put out to dry." (*Do.* p. 50.) (124) Houses inspected daily. Filth removed.

8.—*Quarters occupied by the enemy, caution.* (*G. O. Alenquer, 16th November*, 1810.) "Officers commanding regiments will be very cautious in occupying the quarters in which the *French* troops may have been quartered, to make their men clean them well out before they sleep in them; and if possible, to have *fires* lighted in them; but care must be taken not to burn the houses." (*Do.* p. 48.) Caution occupying enemy's quarters. Fires.

SECTION 28.—CIVIL AND MILITARY AUTHORITIES, MAGISTRATES, &c. (See also QUARTERS, sec. 27.) (*G. O. Frenada, 7th December*, 1811.) Civil and military authorities.

1.—"The commander of the forces has received frequent *complaints* from officers, as well of the *Portuguese* as of the *British* army, belong-

aired, every day, when the weather will permit; the best straw to be dried, the bad burnt on the spot where the tents stood; the floor dug up, the upper spit or sod turned in, and fresh earth thrown upon the floor, in order to destroy the vermin, too frequently met with in the men's tents, and to keep the camp sweet and wholesome." (*General La Faussille*,) p. 50.

(123) Daily—see note 117.

(124) "Commanding officers answerable that their men appear well dressed, and clean." (*G. O. D. of Cumberland, 17th February*, 1745.) "When any man is returned for dirty appearance of any kind, he is to be ordered six days drill for 1st offence; 14 for 2nd, and for 3rd, tried by a court-martial." (*G. O. Do. 26th October*, 1754,) p. 33.

No improper letters. Or language to each other.

ing to the *civil* as well as *military departments*, and to the regiments, of the *uncivil*, and in various instances, *insulting language*, in which some of the communications in writing, with each other, are carried on. It is impossible that the service should not suffer, if those, who are to assist each other, do not agree; and it cannot be expected that they should agree, if *harsh, uncivil,* and *insulting terms*, are used in their necessary communications."

2.—"The commander of the forces is unwilling now to take further notice of this subject, or to draw the attention of the army to those complained of."

Military authority of the country to be respected.

3.—"The commander of the forces has likewise, upon more than one occasion, received complaints of the disgraceful conduct of *British officers* towards the *Portuguese authorities*, particularly the *commandants* of *forts*, and in *provinces*. He trusts that this has proceeded from inexperience; but he desires that an officer in the Portuguese service in command may be treated in every respect as an officer in H. M.'s service in command."

Reports of arrival to.

4.—"All officers and others, belonging to the British army, passing through the limits of his command, and the place of his residence, are to wait upon him and acquaint him with the nature of the service or business on which they are going." (*G. O. D. of W. Principles of War*, pp. 16, 17.)

Magistrates of the country to be respected.

5.—*Magistrates.* (*G. O. Frenada, 13th May*, 1813.) "The commander of the forces receives frequent complaints of the conduct of the officers and soldiers of the army towards the *magistrates* of the country, notwithstanding the repeated orders which have been given on the subject; and it appears the more extraordinary, that ground for these complaints should be given by the officers and soldiers of the *British army*, as it is well known, that in their own country no individual can venture to *insult* or *ill-treat the civil magistrates*."

As in England, &c.

Insults in a friendly country

6.—"Circumstances have, however, increased the inconveniences resulting from such conduct, and the commander of the forces begs that the officers of the army will recollect that the operations of the army are carried on within the territories of *friendly powers*, whose *laws* for the protection of the persons invested with authority are as strict as those of Great Britain, and that any *injury* done, or *insult* given, to the *civil authorities* of the Government, will be attended by the same consequences as similar conduct would in Great Britain."

Punished, as in their own country.

7.—"The commander of the forces begs that pains may be taken to communicate these orders to the *Portuguese* officers and troops, as

well as the British; and he trusts, that the *Portuguese* will pay the same deference and respect to the civil authorities in *Spain*, as all classes of persons are obliged, by the *Laws* of *Portugal*, to pay to the civil authorities in *Portugal*." (*G. O. D. of W. Principles of War*, pp. 290, 291.)

SECTION 29.—CONFINEMENT AND EXAMINATION OF PRISONERS.

Confinement and examinations of prisoners and their persons.

1.—When any soldier or any other military person, camp-follower, &c. is accused of any capital crime, murder, &c. and whether he is to be delivered over to the civil power, or tried by a general court-martial under section 2, 4 Geo. IV. c. 81, (125) security of the person of the prisoner is the first object. Next, his clothes should be examined minutely, to see that he has not about him any instruments of destruction, knives, &c. or poison (126) concealed, *any where*; or any file by which he may file off his irons. At meals, knives and forks are not allowed in cases of those accused of murder, or other serious crimes; or when not so accused, if the state of mind indicates the probability of an attempt to destroy himself. *Women* should be equally examined; and the like precautions be taken.

No instruments of destruction.

Women also.

In particular cases, a sentry is placed inside the prison or cell; as persons have been known to destroy themselves, by knocking their heads against the walls of the prison.

2.—In *India*, *European* soldiers, &c. are confined in the congee-house, or solitary cells, and there is a sentry placed at the back and front of them if required. (127) A man accused of murder, or any felony, is placed in irons.

India.

Sentry.

Irons.

(125) Articles of War, 109, Section 9; Art. 1, Company's, and Section 8, Art. 1, Native Articles of War.

(126) The celebrated *Wolfe Tone* (1798), tried for high treason in Dublin, committed *Suicide*. *State Trials*, vol. xxvii. p. 623. After he cut his throat, a sentry was placed over him to prevent his speaking; he died in prison, p. 626. The Rev. William Jackson, tried in Dublin (1795), for high treason, poisoned himself, and died in the court; the body was left in the dock, and an inquest was held in court next day; (the court having adjourned.) *State Trials*, vol. xxv. p. 889.

(127) In the Madras army, (G. O. C. C. 4th April, 1832,) are the following rules, when soldiers are under *sentence*:

1.—"Only one prisoner in each cell."

2.—"Prisoners to be carefully examined that they have not *knives*, or any thing of an objectionable nature, secreted."

3.—"Fatigue *clothing* only to be worn, while in solitary confinement."

4.—"As a general rule, the *diet* of prisoners under solitary confinement to be *bread and water*; subject to such addition as the medical officer may certify to be necessary." (All men confined, either in the guard or conjee-house, *before conviction*, receive all their rations, except the liquor, or liquor allowance.)

Natives. 3.—*Native* soldiers are usually confined in the quarter-guard; and placed in irons in the cases named *(in No. 2)*. (128)

4.—*Camp-followers.* See note 128.

5.—"The *books* allowed in solitary confinement are, the Bible and Prayer Book, and such religious books as may be permitted by the commanding officer."

6.—"Solitary cells to be opened *once* daily in the presence of the officer on duty, that the cell may be cleaned, the prisoner washed, his clothing shifted, and his daily supply of food given him."

7.—"One cell only to be opened at the same time."

8.—"The officer on duty to ascertain that the above has been done, (No. 6,) and certify the same in his report on coming off duty."

9.—"While the cell is being cleaned, no conversation is to be allowed between the prisoner and other persons."

10.—"Sentries over solitary cells to prevent persons approaching the cells, or conversing with the prisoners; and the sentries to be confined, if detected in conversing with them."

11.—"Solitary cells not to be opened, except as laid down in No. 6, unless in case of sickness; or by express order of the commanding officer, and then in presence of the officer on duty."

12.—"The keys of the solitary cells to be kept in the guard-house, under the orders of the officer on duty."

13.—"In case of sickness, the medical officer in charge is, without delay, to inspect the prisoner himself, and to report to the commanding officer what measures the requisite medical treatment may call for."

14.—"The guard over solitary cells is invariably to be composed of *native troops*." (Europeans cannot well during the day, in warm weather, stand sentry; but in Bengal the conjee-houses for regiments have a verandah, and *European* sentries may then be employed.) As to *state prisoners*, we know that *Trimbukjee Danglia*, the Peishwa's minister, escaped from the Fort at Thannah, Island of Salsette, (Bombay,) while European sentries were over him, and an European regiment quartered there; but he was allowed to go to the *necessary*, from the back of which he escaped. The plan for his escape was made known to him by his Saees coming under the walls *there*, and singing a song explanatory of the means of escape; had there been *native sentries*, it would most likely have been detected. In many cases, I would have both *European* and *native* sentries.

15.—"Courts martial to ascertain that solitary confinement can be duly carried into execution, before passing sentence; and in the case of European soldiers being tried, the staff officer is to report if the whole are filled, or what number of cells are unoccupied."

(128) There should be a building in every cantonment for the regular confinement of European and Native soldiers. Separate cells for those under senten[ce] of death, transportation, imprisonment, and for lesser crimes. Native soldi[ers] cannot now be confined separately, as the quarter and rear-guards only are avail[able] guards; and if there be more than two prisoners, there can be no separatio[n of] prisoners, the mixture of whom should be avoided, particularly regarding th[e] nature of the crime, as well as not to allow a low caste camp-follower to be with soldiers of caste. While the quarter-guard of the senior native regiment is the gene-

SECTION 30.—POLICE, CIVIL. Police civil.

1.—The following cases are comprised in the 9 Geo. IV. c. 74, the act for the "*administration of criminal justice in the East Indies*," and are cognizable, in the first instance, by the magistrates in Calcutta, &c. (129) Acts cognizable.

ral place for confinement of prisoners to be tried by a line or station court-martial, it is impossible.

CAMP-FOLLOWERS, &c. "No inhabitant or public servant of any bazar or cantonment shall be confined, under any pretence whatever, in any other guard than the regular public ones, where the prescribed orders respecting crimes and other formalities are to be strictly attended to, under pain of the penalty attendant on a breach of standing orders." (*G. O. G. G. 19th August*, 1824.) The above order was to prohibit confinement in *bazar guards* and private guards. The rear-guards, as regular public guards, are available: but never used when there is room in the quarter-guard; where the orders are best understood, there being a native officer. If the line guard has not room, or a separation of prisoners be required; the other quarter-guard should be used in preference to rear-guards.

(129) By Section 4 of the Act, "Every justice of the peace before whom any person shall be taken on a charge of *misdemeanor*, or suspicion thereof, shall take the examination of the person charged, not on *oath*; (Blackstone, vol. iv. 296.) *and the information upon oath of those who shall know the facts and circumstances of the case*, and shall put the same, or as much thereof as shall be material, into writing, before he shall *commit* to prison or require *bail* from the person so charged; and in every case of *bailment*, shall certify the bailment in writing; and shall have authority to bind all persons by *recognizance* to appear to *prosecute*, or *give evidence* against the party accused, in like manner as in cases of *felony*; and shall subscribe all *examinations, informations, bailments, and recognizances*, and deliver or cause to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony."

"The *age* of the *accused* should be ascertained, whether under or above 14 years of age, (*Blackstone*, iv. 22,) and the age of the *injured party* in cases of *rape*, (Sec. 65,) *abduction*, (Sec. 68,) stealing children, (Sec. 69.)

"A description of the accused as to person, livelihood, occupation, residence, country, parentage, is required: by which means and by an alphabetical *register*, it is ascertained if they are *old offenders*. A person in the *act* of committing an offence may be apprehended without a warrant. A justice, upon good grounds of *suspicion*, proved on oath, may grant a *search warrant*. A person to whom property, suspected to be stolen, &c. is offered, may seize the party offering it." (*Sec.* 40.)

"The justice may summon the party charged to appear. The *summons* delivered to him personally, or left at his usual place of *abode*," (*not at his office*,) "and upon proof of due service, if he does not appear, proceed *exparte*, or issue his warrant to apprehend him. In some cases may issue his warrant without summons." (*Sec.* 42.) "There is a *summary conviction* in many cases, and if the person so *summarily convicted* shall not pay, &c. the justice may commit him to the common jail or house of correction, to be imprisoned, or imprison-

Abduction, forcible or unlawful, Secs. 67, 68.

Arson, Sec. 114.

Assault with intent to rob, and demands with menaces or force, Sec. 80.

Bigamy, Sec. 70.

Burglary, Secs, 84, 85, 86.

Burning crops, stacks of corn, grain, and plantations, &c. Sec. 123.

Cattle, killing or maiming, Sec. 122.

Child-stealing, under 10 years, Sec. 69.

Concealing birth of child, Sec. 62.

Counterfeiting deeds, &c. Sec. 72.

——— current coin, Sec. 73.

——— altering ditto, Sec. 74.

——— or having in possession counterfeit coin, more than five pieces, unaccounted for, Sec. 75.

——— License or certificate, Sec. 76.

Dams, breaking down, Sec. 121.

Destroying silk, &c. in looms, machinery, &c. Secs. 115, 116.

——— Banks of rivers, &c. Sec. 120.

Embezzlement of money by clerks and servants, Secs. 100, 101.

——— by agents, Secs. 102, 103, 105.

Felonies, Secs. 20, 21, 24.

Forgery, Sec. 32.

Homicide, Sec. 58.

Infamous crimes, Sec. 83.

Larcenies, Secs. 77, 78.

Letters threatening to accuse a party of an infamous crime, to extort money, Sec. 82.

Manslaughter, Secs. 56, 57.

ed and kept to hard labor for any term not more than two calender months, if the amount of the sum *forfeited*, or of the *penalty* imposed, or of both (as the case may be), together with the costs, shall not exceed 50 Sa. Rs. or not more than four months, if not exceeding 100 Rs. and not more than six months in any other case: the commitment to be determinable in each case upon payment of the amount of costs." (*Sec.* 44.)

"If a first conviction, the justice of the peace may discharge the offender upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the justice." (*Sec.* 45.)

"Summary conviction a bar to other proceedings for the same cause." (*Sec.* 46.)

"An *appeal* in cases of *summary conviction*, exceeding 50 rupees, or one month's imprisonment, or if conviction before *one* justice only, to the next court of general or quarter sessions." (*Sec.* 48.)

Miscarriages, procuring, Sec. 61.
Misdemeanors, Secs. 4, 6. (130.)
Money, obtaining by threats of accusing of an infamous crime, Sec. 81.
———, obtaining under false pretences, Sec. 106.
Murder, Secs. 54, 55, 56.
———, attempt to, Sec. 59.
Petit treason, Sec. 53.
Pledging goods of others, for own use, Sec. 104.
Rape, Secs. 64, 65, 66.
Receivers of stolen goods, Secs. 107 to 113.
Rioters demolishing property, Sec. 116.
Robbery, from person, Sec. 80.
——— in a dwelling-house, &c. Sec. 87.
——— from ship, ware-house, &c. Sec. 88.
Sea, &c. bank, &c. destroying, Sec. 120.
Seamen, forcing on shore, &c. Sec. 71.
Ships, setting fire to, &c. Secs. 117 to 119.
Shooting, intent to rob, &c. Sec. 60.
Slaves, importing, &c. 5 Geo. IV. c. 113.
Sodomy, Sec. 63.
Stealing, public or private securities for money, or warrants for goods, Sec. 79.
——— from person, Sec. 80.
——— in a house, Sec. 85.
——— goods from vessels, &c. Sec. 89.

(130) *Assaults and batteries*, (indecent, &c. assaults.) *Affrays* and breaches of the peace, *cruelty* to animals, *challenges*, *cheats*, *conspiracies*, *duels*, *disturbances*, *deserters*. (cl. 24, M. A. *King's*, Secs. 67, 68, 4 Geo. IV. c. 81, *Company's*.) *Extortion*. *Flogging* sailors or servants, *frauds*, *landlords*, disorderly houses, *libel*, (criminal information,) *licences*, *mutiny* of sailors on board ship, &c. *nuisances*, *meetings*, illegal, riotous, &c. *public houses* disorderly, *pawn-brokers* receiving stolen goods, &c. *placards* inciting to illegal meetings, or tending to disturb the *peace*, *prisoners* breaking out of prison, &c. *quarrels*, *riots*, *selling or buying* arms, clothing, ammunition, or necessaries, forage, &c. of soldiers, (*clause* 64, M. A. *King's*, Sec. 56, 4 Geo. IV. c. 81. *Company's*.) *Sunday*, disturbing service; public house open during, *swearing*, *trespasses vi et armis*, *vagrants*, *wages*, conspiracies to raise. *Wife* swearing peace against husband, *work-people* refusing to work, &c. *wounding*, &c. (and as to *apprentices*, *canteens*, *enlisting*, &c. under the M. Acts.)

But, not as to servants' wages; if servants are turned out by force, may apply to magistrate. Servants, *v.* the Hon'ble L. Wellesley, (*Marlborough St. 30th December*, 1832.) Nor, in any cases in which justice may be obtained by bringing a civil action, which gives the remedy.

Stealing Records, &c. of courts of justice, &c. Sec. 93.

————Wills, Sec. 94.

————Writings relating to real estates, Secs. 95, 96.

————Dogs, beasts, or birds, kept in confinement, Sec. 97.

————Fixtures from buildings, or metal fixtures from grounds, Sec. 98.

————from masters, by clerks and servants, Sec. 99.

Stolen property, Sec. 40.

Transportation, returning from, Sec. 31.

Treason.

Wrecks, plundering, Sec. 90.

———, possessing goods of shipwreck, not giving satisfactory account of, Sec. 91.

———, or offering ditto for sale, Sec. 92.

Jurisdiction. 2.—The jurisdiction extends to cases of crimes committed below Diamond Harbour, or on the *high-seas,* and to all persons and to all places over whom the jurisdiction of the Supreme Courts in India does, or shall hereafter extend, (*Sec.* 1;) but, in cases below *Diamond Harbour*, or acts committed on the *high-seas,* the jurisdiction, as an *admiralty* one: and the case must be referred to the proper officer. (*Sec.* 4.) (131)

Examinations. 3.—The *examinations* are usually *public,* and the prisoner is present; but they are sometimes taken in a private room. In examining *witnesses* as to a *former examination,* you must produce *them.* (*The K. v. Samuel Waddington, per C. S,*) O. B. 23rd October, 1822. (132)

(131) A man was tried in December, 1829, for stealing Mr. Gilmore's watch, on board the ship Fairlie; and it being proved to have been stolen *below Diamond Harbour,* he was acquitted; it being an *Admiralty Case (Govt. Gazette).* The *Admiralty Jurisdiction* is not to the *West* of the *Cape. Charles Bertie, v. Capt. Lindsay, Barque Tam O'Shanter,*" (Calcutta, Police Office, 1st June, 1831.) Nor does the jurisdiction extend to the *French, Dutch,* or *Danish,* &c., Settlements in India, nor to complaints of French, &c. sailors against their commanders; they must apply to their own jurisdiction, if committed out of Calcutta. (*Jean Gabriel Pauvran, Gunner, French Corvette, Madagascar,*) Calcutta Police, 7th Dec. 1831; nor to the kingdom of Oud'h.

(132) The case of the affray between the preventive service, and a gang of smugglers on the coast of Kent, in which Mr. McKenzie was killed. Quested and Wraight were brought up for final examination; they were conducted, with their solicitors, into a *private room,* where the depositions of several witnesses were taken. (*Bow-street Police Office,* General Evening Post, 1st to 3rd March, 1822.)

(133) "Although, before a magistrate, the party *accused* is present, it has been determined, that *he* is not, in a preliminary proceeding, *entitled* to the assistance of an *attorney;* and there seems to be no reason in principle, nor is any to be col-

4.—An attorney or other legal adviser usually is allowed to attend. (133) Legal adviser.

5.—Reporters are, at times, excluded, (134) and women and children are whenever any indecent disclosures are made. (135) Reporters.

6.—*Depositions* are signed; and if the evidence they contain is to be used at the trial, the magistrate is present, and examined as to the truth of their contents, and having been taken by him. Depositions.

7.—*Confession* of prisoners must not be on oath, (136) nor be extorted by threats, nor promise of pardon. The crown alone can pardon. Confessions.

8.—*Deposition,* prisoner cannot demand a copy of. No copy of depositions.

9.—The police sometimes investigate cases during an inquest, (adjourned.) Inquest on the body of *Fazil,* Nápal trader, Calcutta, 1st February, 1853. Or after it has been held, to pursue the inquiry as to suspected persons, or make searches, &c. (*See Acts 7 and 8, Geo. IV. c. 27, and 9, Geo. IV. c. 31. Acts repealed by them in* ENGLAND *are repealed as to* INDIA.) (*Sec.* 125. *See also Sec.* 21.) (137) Examinations after inquest.

lected from the judgment of the court, why *barristers* should not be included in the same general rule," (2. *D. and R.* 86; 1. *B. and C.* 71.) Jarvis's treatise on Office of Coroners, p. 240.

(134) A daring robbery committed, by a syce, on the premises of Messrs. Boyd, Beeby and Co., Calcutta Police, 23rd May, 1831, and Shaik Abdoollah, 3rd May, 1831.

(135) Old Bailey, (trial of *John Holland, William King, and North,*) on being asked what they had to say why sentence of death should not be passed. (*24th Sept.* 1822.)

(136) Nor before *private persons,* as it might lead to the escape of those *implicated. Halloway* (the murderer at Brighton) was told he might withdraw his confession, and not sign it. The magistrates of Horsham having read it to the prisoner signed it. He accused *Kinnard.* (*Observer, 21st August,* 1831.)

(137) A military officer is superintendent of Police in Calcutta. (*G. O. V. P. 10th December,* 1830.)

Dying declarations, should be read to prisoner, or accused; are only taken when death is thought to be immediately likely to occur.

Publication of Proceedings. All courts may prohibit then *before* trial.

COMMITTAL AND BAIL.—"One or more justice or justices of the peace may on a charge being supported by positive and credible evidence, or by such evidence, as, if not explained or contradicted, shall raise a strong presumption of the guilt of the accused; such person shall be *committed:* but, if there shall be only one justice present, and the evidence shall neither raise a strong presumption of guilt, nor warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody until he or she shall be taken before two justices at the least; provided, that in all cases when any person or persons shall be brought before one justice *at any place beyond the local limits of the jurisdiction of any of*

H. M. courts of justice," (Calcutta, Madras, and Bombay,) " erected, or to be erected within the British territories of the H. C., *it shall be lawful for one justice to commit or to bail,* and when any person shall be charged with *felony* or on suspicion of felony, and the evidence shall not be such as to raise a strong presumption of guilt, and to require committal, or the evidence produced by the accused shall weaken the presumption of guilt, but that shall still appear sufficient ground for judicial inquiry, the person shall be admitted to bail ; *provided, that nothing shall be construed to require such justice or justices to hear evidence on behalf of the accused, unless it shall appear to be meet and conducive to the ends of justice to hear the same.*" (Sec. 2.)

Restitution of stolen Property.—" The owner of *stolen property*, prosecuting the *thief* or *receiver* to conviction, shall have restitution of his property. *Provided, that if before award or order made, any valuable security shall have been bonâ fide paid or discharged by some person or body corporate liable to the payment thereof, or, being a negociable instrument, shall have been bonâ fide taken or received by transfer or delivery, for a just and valuable consideration, without any notice or reasonable cause to suspect the same to have been stolen, the court shall not order restitution.*" (Sec. 110.)

CHAP. II.

INQUESTS.

SECTION 1.—MILITARY INQUESTS, IN BENGAL, ARE HELD UNDER THE FOLLOWING CIRCULAR.

" SIR,

" The Commander-in-chief considering it of importance, that a minute investigation should be made of all cases of *sudden*, (1) *unnatural death*, or of *death* attended with circumstances of a *suspicious nature*, has directed me to request, that, on the occurrence of any case of this description, an inquest be invariably holden, and a full report of its result be made to the officer commanding the division."

Sudden unnatural suspicious death.

Report.

2.—" The committee to which the prosecution of the inquiry is to be assigned, is to consist of two experienced officers, 'and of any medical officer the commanding officer may appoint, with reference to the spot where the inquest is held, and to the duty falling as equally as practicable on the surgeons in medical charge of regiments at the station.' (2) It will be the duty of the latter officer to report on the appearance of the dead body on which the inquest is holden; and his *certificate*, whether the death of the person was caused by violence or not, is to form a part of the proceedings of the committee to the officer commanding at———." (*Circular A. G. O. No. 267, 7th March*, 1829.) (3)

Two experienced officers and surgeon.

Medical certificate.

3.—" It is said inquests should not be held on a *Sunday*, (4) but this inquest is a rule of law which should not apply to India. As to

Not on Sunday, except &c.

(1) " *Sudden*." Circulated A. G. O. No. 1361, 19th August, 1829.

(2) *Ditto*.

(3) The inquest is usually composed of a field-officer, captain, and surgeon; or of inferior rank, if impracticable. At some stations, inquests are held by regiments (European) when at a distance from the main body of the cantonment. This is done in some native regiments, the names of the president and members being sent to be put in station orders.

The climate renders immediate inquiry necessary. Though the officer commanding the station orders the inquest to sit, the proceedings from all stations, posts, &c. are sent either to the A. A. G. D. J. A. G. or other staff-officer, as may be directed, and should be seen by the D. J. A. G. in all cases of a *suspicious nature*, &c.

(4) Jervis, 232, but it will be seen in case 17, that an inquest was held on *Sunday*, in *England*, *August*, 1831. It must at times, in warm weather, be so holden.

the inquests held in Calcutta, Madras, and Bombay, where there is a regular Coroner, there is an Act of Parliament, (9 *Geo. IV. c. 74,*) to govern their conduct." (5)

Jurisdiction. 4.—"The *jurisdiction* of military inquests extends to the cases of all persons, man, woman, or child, *European* or *native*, or to strangers, &c. found dead under the circumstances named in par. 1. A person so dying, if a soldier or other person, should be immediately reported to the major of brigade or other station staff officer, deputy or acting adjutant-general. (6) If a person be found dead out of the limits of a

on a Sunday. The body becomes putrid. If it be illegal to take evidence, which leads to implicate the party accused, that may be put off, but the view of the body, and opening it on a *Sunday* must take place, for the reason given in note 71, to case 17. We have no *deodands, fines*, &c. and the evidence we take is not on oath, nor are our inquests sworn. They may be held at any hour, day or night.

The *civil* inquests consist of from 12 to 18, &c. persons, with us a majority must concur, 12 of whom must agree. And if on a man dying in prison half are taken from the prisoners. (*Jervis*, 224, 26.)

(5) Sec. 5. "That every coroner, upon any inquisition before him taken, whereby any person shall be indicted for *manslaughter*, or *murder*, as an accessary to murder before the fact, shall put in writing the *evidence* given to the jury before him; or *as much thereof as shall be material;* and shall have authority to bind by *recognizance* all such persons as know or declare anything material touching the said manslaughter or murder, or the said offence of being accessary to murder, to appear at the next court of Oyer and Terminer or gaol delivery, or superior criminal court, or sessions, at which the trial is to be, then and there to prosecute, or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court, (*under Sec.* 6, he is punishable for neglects.) If he commits the person to stand his trial, application must, if made for *bail*, be to the Supreme court, if in *term time*, otherwise to a judge in chambers."

(6) "The dying suddenly is not to be understood of a *fever, apoplexy*, or other *visitation of God*, and coroners ought not in such cases, nor indeed in any case, to obtrude themselves into private families for the purpose of instituting inquiry," (11, *East*, 229,) "but should wait until they are sent for by the peace officers of the place, to whom it is the duty of those in whose houses *violent* or *unnatural deaths* occur, to make immediate communication, whilst the body is fresh, (*see note* 3,) and, if possible, whilst it remains in the same situation as when the person died. (*Salk*, 377, *F. P. C.* 378,) Jervis, 24.

Military cases. Where a person has been ill and died of fever, &c. the medical officer, when the death is reported, should certify, "That the deceased who had laboured under ——— complaint died in consequence thereof, and that there is no reason to suppose he has been *poisoned*, or came to a violent death by the hands of any person;" or, as may be the case. This will render an inquest unnecessary. (*See case* 23.)

cantonment where the civil authority extends, it is not a case for military inquests. But if the person, though not military, should be found ill out of the limits, be brought within them, and die,—then I would hold an inquest, unless the friends of the party came and objected." (7)

5.—*Witnesses.* Most persons may be witnesses before inquests. The exceptions in the *army* are few. (8) Witnesses are not sworn at military inquests. Witnesses.

6.—*View of the body.* The court should go to the spot, in all practicable cases, and may then adjourn to take evidence to any place—president's quarters, &c. View of body.

The body is sometimes opened before the jury see it, by the surgeon. The weather may oblige this to be done; but, if practicable, the jury should first see the body. (9)

7.—*View of the house.* Having seen the body, it may be right, in cases of suspicion to view the premises, (*see case* 2,) to see if there be stains or blood, or any weapons, &c. (10) View of the house.

8.—*Medical evidence.* Military inquests usually have only one medical officer present, but in doubtful cases, more may be necessary: Medical evidence.

(7) Give intimation to the magistrate if there be suspicion attached to any person, and information to the friends direct, if possible, (or through magistrate,) if there be no suspicion.

If a soldier or other military person die under suspicious circumstances, in cases where the civil power have cognizance, the inquest should be sent to the magistrate, and suspected persons be confined.

(8) "Those convicted of treason, felony, (the distinction between grand and petit larceny is abolished,) every species of *crimen falsi*, as perjury, subornation of perjury, piracy, swindling, cheating, barratry, *premunire*, and bribing a witness to absent himself and not give evidence; a conviction for a conspiracy at the suit of the King; or winning money by fraud or ill practices at certain games; or, for bribing a witness to absent himself, and not give evidence before justices upon an information against the revenue laws, are incompetent. The testimony of an avowed accomplice, for or against outlawry, in treason and felony, in all cases you must produce the *record* of *judgment*. The endurance of punishment qualifies as a *pardon* does, except in *perjury*; or, the reversal of judgment qualifies." (*Jervis*, p. 232.) But proof must be produced, nor are "*idiots*, *madmen*, and *lunatics*, during the influence of the frensy, competent; but during lucid intervals may be examined."

"Persons *deaf* and *dumb* may be examined, if they are capable of communicating their ideas by *signs*, and have a due sense of the obligation of an oath, and examined through an *interpreter*. Children of any age of knowledge and understanding." (*Jervis*, p. 230.)

(9) See case 20. For many marks or traces of blows may be lost, by dissection. The state of the weather must determine this point. "Unless the jury view the body it is not a legal inquest." *Jervis*, 251.

(10) See case 3. In cases of Arson, &c.

and the other medical men who have seen the patient before, or body after death, should be examined. (11)

Description of deceased.

9.—*Description of the deceased.* A description of the deceased is requisite, for if the person died in consequence of a *rape*, &c. the crime falls under a particular charge. (12) And for other purposes, that friends may know the body to have been the person of their family, if missing, &c., the Christian and surname, or that by which he was known. (13)

Description of accused.

10.—*Description of the accused, or suspected person, (as in the above case.* (14)

Body where found.

11.—Where the body was found. Sometimes, after being murdered, the body is concealed, and if so, the people near the house should be examined minutely, and if any one absconds, information should be given, to lead to the apprehension of the suspected person, by addressing the civil authorities through the commanding officer. (15)

Body when disinterred.

12.—Body sometimes disinterred. This must be done with authority, the civil power must be applied to. (16)

Who may attend inquest.

13.—As to who may attend. The friends are generally allowed to attend. (17)

Accused when allowed.

14.—The accused or suspected person, if at the inquest, not of right. "The right: it is clear, from a late decision, (6 *B. and C.* 611,) that the Coroner has the power of excluding not only particular individuals, but the public generally;" and, therefore as to whether

(11) Dr. J. G. Smith recommends a division of labor among medical men. There may be tests and experiments to make. *Smith, p.* 140.

(12) "Carnal knowledge of a girl under the age of 8 years." Sec. 65, 9 Geo. IV. c. 74.

(13) Jervis, 250. A full description. Thus, the probable age, size, make, peculiar marks, color of body and hair, and if any jewels about the person, to be recorded, clothes &c. to be examined, and the sex, and occupation of life.

(14) Jervis, 252. See Blackstone, vol. IV. p. 24. If the party can discern good from evil conduct, or knows right from wrong, he is amenable to trial.

(15) I think courts should be armed with such authority, as a day's post may be lost.

(16) It was done in Calcutta in the case of *Manual Berry*, Calcutta 6th July, 1832. "Where the body has been buried so long that it may reasonably be presumed that the view of the body can afford no information, the coroner ought not to disinter it." *Jervis,* 212. "An inquisition may be held at *D.* upon the view of the body lying dead at *L.*" p. 249.

Where many persons have been killed, the bodies have been viewed at different places. See case 15.

(17) See case 22, *note.*

the accused or suspected person should be allowed to be present, (18) it rests with the court.

Counsel not of right.

15.—Counsel, &c. not of right. Though attornies and counsel are usually allowed, it is not of *right* that they are present. (19)

Examination of witnesses.

16.—Examination of witnesses.

1.—Evidence should be taken down in writing in the first person, "I, &c." and as much as is material. See note 5.

2.—The suspected person is sometimes examined. But the party should be cautioned not to criminate himself. (20)

(18) Jervis, 222. See also Starkie II. 492. Russell, II. 661. The following are cases in which

Accused present.

Accused was Present at Inquest.

1. *Corder* was at the inquest held on the body of *Maria Marten*, at Polstead, 22nd April, 1828. Mr. Humphreys urged the right, as *Patch* had been at the inquest of *Mr. Blight* (1805). The coroner (*Mr. Wayman*) said, *he* was not then in custody, and denied the *right*. The depositions were read over to him. Mr. H. said, *Hunt* and *Probert* were at the inquest held on *Mr. Weare*.

2. At the inquest on *Lord Mountsandford, Thomas Hunt and Brinklett* were present. (*Observer*, 28*th June*, 1828.)

3. Present in cases 3 and 7.

4. At the inquest on *Sullar Bux, Khurreem Bux* was present. (*Calcutta, 8th June*, 1833.)

Not present.

Not present at Inquest (*accused*).

1. At the inquest on the body of *Sarah Wayle*, alias *Mary Ann Brown*, aged 24, at Kensington, *Bermingham* was in another room, and other persons placed there to see if the witnesses could identify the prisoner. (*Globe*, 19*th May*, 1829.)

2. Not present in case 5.

3. At the inquest on the body of *Miss Catherine Cashin*, Mr. Long was not present, but was in the house. (*Evening Mail*, 25*th August*, 1830.)

4. At the inquest on the body of *Mr. Malcolm*, at Shelhaven, Captain *Moir* was in an adjoining room. (*Sun*, 29*th March*, 1830.)

Rule. A military inquest is not like a court of inquiry. In the case of the court of inquiry held to inquire into the cause of the death of *Serjeant Malcolm* of Artillery, at Kurnal, *Serjeant Smith* was not present. *Smith*, in his defence, urged the hardship: the *J. A.* replied to it, that in such case the court sat in the capacity of a *grand jury*, and this cause was not objected to by the Commander-in-chief. (*See the publication of Smith's crime. G. O. C. C.* 21*st April*, 1830.) This case was confirmed by the Governor General in Council.

(19) "Though before a magistrate the party accused is present, it has been determined, that he is not, in a preliminary proceeding, entitled to the assistance of an attorney." (*Jervis*, 240.)

(20) At the inquest of the body of *Peer Bux, Alexander Cock* was, though the jury returned a verdict of *manslaughter*. (*Calcutta, India Gazette*, 9*th December*, 1831.)

3.—A witness sometimes is taken to see the body; (21) and suspected persons have been, to see if they by their countenance looked confused, &c.

4.—*Evidence of medical men.* The evidence of medical men is of great importance, and in some cases a great number have been examined. (22)

SECTION 2.—GENERAL RULES IN EXAMINING WITNESSES.

General rules in putting questions.

The following questions may be useful in the cases stated below:

I. DROWNING.

Drowning.

1.—Where was the body found, and who found it? (*examine them.*)

2.—How was the deceased dressed?

3.—Did any one see him throw himself in—who? (*examine them.*)

4.—Did any one see him leave his lines, or hut, and was he alone, or with others? (*if with others, examine them.*)

5.—Was the deceased drunk, or had he be[illegible]nking the night before, or during the day, and in whose company? (*examine them.*)

6.—From the position of the body in the water, is it probable he committed the act himself, or did others? (*See case* 11, *note.*)

7.—Had there been any quarrel between the deceased and his wife, or others? (*examine them.*)

8.—Was the deceased much in debt; had he been suffering under any disease, or complaint: or any cause for jealousy? Had he lost money at gambling, &c.?

9.—How long is it since he left his home: did he say where he was going?

10.—Was there any *froth* about the mouth? (*there would not be if killed first, and then thrown in,*) (*or, any questions* in Nos. 2, 3, and 4.)

II. HANGING.

Hanging.

1.—Did any one see the deceased hang himself, or was any one near?

2.—Does any person, and who, live in the same house? (*examine them.*)

3.—Has such person *absconded;* what are *his* habits of life? (*sent after him.*)

4.—Was there any quarrel between deceased and the person who

(21) The inquest on body of *Fazil,* the *Nipal trader,* a witness was taken to see the body. (*Calcutta,* 1*st February,* 1833.)

(22) At the inquest held on the body of Miss Cashin, nine medical men were examined by her friends, and four by Mr. Long's counsel. (*London,* 24*th August,* 1830.)

lived with him? Had they made up that quarrel, and been reconciled? What was the cause of quarrel?

5.—From the position of the body of the deceased do you think A hung himself; could he, being suspended by the cord, have supported his feet; or, by his hands, have prevented strangulation?

6.—What is the age and sex of the party hanged? Had there been any disappointment to cause the act?

7.—If a stranger, how long resident in the bazar? Did you ever hear where he came from? (*inquire.*)

8.—Did you hear any noise, or crying out? Was the noise loud, like a person crying out for help?

9.—What kind of a rope was it? or, did it belong to any one? (*examine them.*)

10.—Was there any marks of beating about the head or body; as if some one had killed the deceased, and then hung him?

11.—Were the marks about the neck much swollen? (*if the person had been first killed, the marks would be less swollen.*)

12.—Were the hands of the deceased fastened, any marks of cord about them?

13.—Did the deceased commit the act, from desperate cause, from starvation? (*See case 17.*) See any questions in Nos. 1, 3, and 4.

III. Poisoning. Poisoning.

1.—How long had the deceased been ill; what was the nature of his complaint?

2.—From the appearance on opening the body, what was the nature of the poison found?

3.—Was any of the same kind, or any other poison found near the deceased in his hut, box, or near his bed, or bedclothes, or body clothes?

4.—Was there any melancholy habits about the deceased; any cause for jealousy, disappointment, or pecuniary losses, or difficulties; any loss of friends, &c.; any illness, or depression of spirits, or given to drinking, or using noxious and intoxicating drugs?

5.—Did the deceased buy any arsenic, or other poison, in the bazar? (*inquire in the bazars, from whom.*) Did he say for what purpose he wanted it, and was any body with him at the time? Did he appear agitated, or confused, or ill?

6.—Did you examine the contents of the stomach on vomiting, and apply the usual *tests*? Did you examine the food he had eaten? Had any other person eaten of the same dinner? Who were present at the dinner? Did any one abstain from eating at it? (*examine them.*)

7.—Did the deceased before dying accuse any one as having mixed poison with his food? or say he suspected some one, as there had been a quarrel lately on account of a woman? (*examine these people.*) *See cases* 21, 22, 23 *and* 24, *also* consult questions in Nos. 1, 2, and 4.

Shooting.

IV. SHOOTING, &c.

1.—Whether by a musket, or pistol?

2.—Whose musket, &c.? (*examine him.*)

3.—Was there any powder, ball, or shot, found near the body, in the hut, or concealed in any box, or in the bed, or about his clothes? Where did he get the powder, &c. from whom?

4.—The position of the body, and instrument. (23)

5.—Were there other pistols on the spot, near the deceased?

6.—Who heard the report? (*examine him.*)

7.—Was any one seen to run away after the report, any-one absent during the night at roll call, or who was for duty?

8.—Was there the report of more than one musket, or pistol? (*might have fired at a robber and been killed.*)

9.—How was the piece charged, with a ball, or shot, and what kind of shot, what number?

10.—Was there any marks or stains of blood on the pistol? (*which might be if the person shot himself, and not if shot by another.*)

11.—What was the nature of the wound, was it behind the head, at the back of it, or in the back? (*clearly if so, he did not shoot himself!*)

12.—Did you hear any groans, or any exclamation, and repeated any shouting out?

13.—When the deceased was taken to hospital, was he dead? Did he say any thing to cast a suspicion on any one?

14.—Did his friends come to see him? (*if not, it would be suspicious.*)

15.—Did you remark any person, who knew the deceased, to change countenance on hearing of his death?

16.—Were there any sabre or sword cuts about the body? Did he die from those wounds, or from being shot? (24) See, and consult questions in Nos. 1, 2, and 3. See case 25.

(23) A man once was found shot, and a pistol on the left side, where the wound was. The deceased was *left-handed;* but was shot by another person, who placed the pistol there. The presumption is generally (persons *not* being *left-handed*) that some other person killed the deceased. (See case 25, bottom of evidence of third witness!) The position is of consequence. A sepoy has been known to place a musket into his mouth, and pull the trigger with his toes!

(24) Sometimes a man wounds another with a sword; and then wounds him with a pistol, (*perhaps in the same place,*) and then leaves the pistol with blood on

17.—Has there been any property stolen? Are there any traces of feet near the spot, or house, or road leading to or from it? (*Patch's case*, p. 587; *Celebrated Trials*, vol. v.) as to CUTTING OR STABBING, &c. the foregoing questions may be useful. (25)

SECTION 3.—FORM OF PROCEEDINGS.

Proceedings of a court of inquest held on the body of A, found dead, assembled by order of Lieut.-Col. B, commanding, to inquire into the cause of the death of the said A. and appointing the following officers to compose the court. Kurnal,—July, 183—. Form of proceedings.

President.

Major C———.

(Members.)

Captain D. Surgeon E.

1.—The court proceeded to the spot where the body was found, (*describe the position,*) or went to the hospital of ——Regiment, where the body was lying, (*neither court nor witnesses sworn.*) Body examined on spot.

2.—Surgeon F. examines the body in the presence of the court, says the cause of death is too apparent to require the body to be opened, or wishes to open the body, which is done. (26) Record appearance of the body. (27) Surgeon examines body.

3.—The court adjourn to the president's quarters (*or to any place*) to take evidence. An *interpreter* should be present: and the adjutant of the week. Adjourn to take evidence.

4.—Record the evidence in the first person. F, a witness is called, and cautioned, (*G. O. C. C. 8th February*, 1802,) as to the evidence he may give, as he may be called on to give evidence on *oath* at the Evidence recorded. 1st witness.

it, to lead to the belief that the deceased shot himself. A court must suppose the worst that human ingenuity can devise, to sift these cases, for *improbabilities* are still *possible!*

(25) "On the trial of *William Butterworth* and *Francis Jennison*, at Hants Assizes, August 1794, for the murder of *Mr. Groundwater*, before *J. Grose* and *B. Thompson*, it came out in evidence that they gave Mr. G. three such wounds on the skull that his brains fell out in the quantity of a double handful. *Mr. Hill, Surgeon*, deposed that Mr. G. lived 18 hours, notwithstanding a prodigious effusion of blood had taken place. He never spoke after the second blow was given, but the action of the pulse was strong, and respiration continued the whole of the 18 hours." (*Celebrated Trials*, v. 283.)

(26) He may call in any other medical men, (*see note* 22,) and the two other members may take down the evidence, or Surgeon F. may get others to open the body. A division of labor is advised. (*Dr. J. G. Smith*, p. 140.) Opening the skull in cases of *sudden death, fever, poison*, &c. is advised.

(27) And sex, age, and occupation of life of deceased. *See notes* 12, 13.

trial. Only such evidence as is material need be recorded. (28) Call the friends, &c. of deceased. (*See Sec.* 1, *par.* 15, *and notes.*) As to *counsel*, see note 19.

Accused, if present. 5.—The accused, or suspected, if allowed to be present, (29) may cross-examine: but see note 30.

2nd witness. 6.—Another witness, G, examined; as many as may be necessary. Consult *questions* in SECTION 2.

Medical evidence. 7.—*Medical evidence.* Surgeon F. having examined the body, describes the external marks of violence; and then that having opened the body with Dr. H. they found (*describing the internal appearance on dissection,*) may examine Dr. H. Medical evidence is best last: as the body has been examined, witnesses may abscond!

Statement by accused, &c. 8.—The accused, being cautioned not to criminate himself, may make any statement, and examine any witness. (30)

Depositions read over. 9.—*Depositions* should be read over to the witnesses, (*dying declarations of deceased should be taken, and read in presence of the accused, &c.*)

Instruments produced. 10.—The instruments of destruction are usually produced. (31)

Contempts. 11.—Contempts are punishable. (32)

(28) *See note* 5.

(29) See Sec. 1. 13, note 18.

(30) In the case of Hemming's murder, though Thomas Clews had confessed his having been concerned in the murder, his wife was examined at Worcester, but this was in relation to the murder of *Mr. Parker*, murdered by *Hemming*; (*Globe, 6th February*, 1830,) but Jervis says, neither husband or wife should be, p. 234. See case 10.

1. Witnesses of any *age* may be examined, a little girl aged 6 or 7 years has been—Inquest in City Road, London, (Cummerland's Head,) 17th October, 1822. (*Morning Herald.*) So, at the inquest on *Caloo, Teen Cowrie*, aged 9 years and 3 months, was examined, though the *Moulvee* said it was illegal to swear a child under 12 years. (*Calcutta, 11th November*, 1830.)

2. A witness has been ordered into custody owing to prevarication in her evidence, (in the case of inquest on *Fazil Khan, Nipal trader*,) her name *Khanum Jaun.* (*Calcutta, 1st February*, 1833.)

3. "In one case the coroner destroyed the depositions of *Haroo Molla, Ramchurn*, and *Davychurn*, telling them that the property of the murdered person having been traced to them, they must be considered as implicated in the murder."

4. Witnesses are sometimes confronted—done so on the above inquest, (*Fazil Khan.*)

5. Prisoner sometimes examined,—*Moorad Ally*, in *Fazil Khan's* case.

(31) *Michael Shehan's* case. (*Calcutta, 5th August*, 1830.)

(32) Every coroner may remove by force (*Jervis*, 242) any person in contempt of court, or obstructing proceedings. In military inquests—would place an

12.—Publication of proceedings may be prohibited. (33) Publication prohibited.

13.—*Adjournment.* The court may sit at any hour, day or night. (34) But should record hour of meeting and adjournment. They may adjourn for any purpose. (35) Adjournment.

14.—Magistrates sometimes examined. (36) Magistrate examined.

15.—Summing up if required, and reading over the evidence, (37) to explain who are culpable. (38) Summing up.

16.—*Medical Certificate.* I, F ——— having inspected the body of A——— found that he had —— and —— wounds (*minutely described*), and do hereby certify, that I am of opinion that the said A died of the wound (*or wounds*) inflicted in the head, &c.; which mortal wounds caused his death.

(Signed) F. *Surgeon, and Member of the Court of Inquest.*

17.—*Committal* or *confinement* of the accused, or suspected person. (39)

18.—Verdict or Finding. (*Consult cases* 1 to 29 in Section 3.)

The court, from a view of the body, description of the wounds, as certified by its medical member: and from the evidence before them, are of opinion, that A ——— was killed by the malicious, wilful, and felonious act of I, (*kicking, striking, poisoning, shooting, &c. by blows inflicted on the head, &c.*) and return a verdict of *wilful murder* against the said I. (or, if a *natural death*, that A died a *natural death*, and not by any violence inflicted by any other person; or, was killed by a per-

officer in arrest, a non-commissioned officer or soldier in confinement, and report it to station staff officer, &c.

(33) Jervis, 242.

(34) In the case of the murder of two Havildars, 23rd N. I. by a sepoy of that regiment, the inquest was held at 8 p. m. that night, in the lines of the regiment. (*Kurnaul, 21st May*, 1832.)

(35) Jervis, 293. Or, to allow the police to make further inquiries, *Fazil Khan's* case. *Calcutta, 1st February*, 1833.

(36) At the inquest of *Mr. Manual Berry*, the chief magistrate, *Mr. McFarlan*, was examined, as to what *Mr. Chas. B.* had said when examined by him. (*Calcutta, 6th July*, 1832.)

(37) Jervis, 253.

(38) All present at a *murder*, or concerned in it, should be confined, and accessories *before* and *after* the fact: the court cannot know if the fact will prove *murder* or *manslaughter*, so it is safest, in all cases, to confine. "Those who are barely present when a felony is committed, and reamin passive, neither encouraging nor endeavouring to apprehend the offenders and prevent the felony, are not guilty either as *principals* or *accessaries* to it." (2 *Hawk, P. C. c.* 29. *s.* 10.) *Jervis*, 98.

(39) Jervis, 272. In military cases, the court should confine and report.

son, or persons, unknown to the court, and who has (*if so*) since absconded and cannot be found. (40) *A majority* decide—a copy is required if the proceedings are to be sent to the magistrate. The proceedings are lodged in the station, &c. staff office. Those or *King's* and *European* soldiers should be kept by regiments (or a copy be taken) to refer to, to satisfy friends.

19.—*Adjourn sine die.* (Process may be revised any number of times,) and president takes or sends them to the officer commanding the station. REGISTER. An alphabetical list of all inquests should be kept in station and division register books.

Accidents. Case 1.

CASE 1.—ACCIDENTAL, THEATRE FALLING DOWN. An inquest was held in March, 1828, on the bodies of 11 persons, who were killed by the falling down of the Royal Brunswick Theatre, in Wells-street, (41) London, and two eminent civil architects were directed by the Secretary of State to examine the ruins and make a report thereon, which, among other matters stated that, "After a careful inspection of the ruins of the Brunswick Theatre, and of the drawings of its construction exhibited to us, and having read the various depositions made concerning it, we are of opinion, that the principle upon which the roof was constructed (42) was injudicious, unsafe, and improper for a theatre."

(40) The president and members sign, and medical officer, (*member*,) as also should he the certificate before verdict. The commanding officer of the station signs them, and then are sent to the general officer, commanding the division, who signs them also. The interpreter should sign. Any member may act as interpreter.

Funeral. "*Sane* persons who commit *suicide*, are directed to be interred in the consecrated burying-ground, after night-fall; but without funeral rites, or any military honors whatever." (*G. O. C. C. 24th September*, 1829.)

A certificate is required, being a copy of the verdict, by the military chaplain. "The late *Bishop Turner* recommended, that the *Church service* should be read over them at their interment."

REMARK. The court should be empowered to send for any witnesses direct from any other regiment, without writing to the commanding officer. And to write to the civil authorities direct, or these courts are otherwise inefficient. They should make the commanding officer of the station acquainted with their proceedings of course, but it is very clear that by forms we may lose substantial justice.

CONFESSION must not be extorted, nor on promise of pardon—the crown alone can pardon.

NOTES. In difficult cases, the members should take notes.

Remark. If 12 of jury do not agree, it is no verdict, *Jervis*, 229. At Montreal, (*Canada*,) a jury not agreeing were discharged. (*Greenock Advertiser*, 1832.) A court may animadvert on the evidence, or parties, &c.

(41) It lasted 20 days.

(42) *Messrs. Nash and Smirke*, civil architects, signed the report. Mr. N. thought the roof gave way first. The report was submitted to the jury, and *they* were ex-

XX— 57—!

Many witnesses were examined; and a number of adjournments took place. VERDICT (*special*) of "*accidental death*" in all the cases (*eleven persons*), caused by the falling of the iron roof put upon the Brunswick Theatre, and also of the substances attached thereto, and appended therefrom," &c. (*minutely described.*) (*John Bull*, 13*th April*, 1828.) (43) Verdict.

CASE 2.—FALLING FROM A WINDOW. A man, named *Thomas Alexander*, alias *John Pearce*, fell from a window in a Punch-house in the Radha Bazar, and died in consequence of the injuries he had received. The coroner had no reason to believe the facts different from what had been stated, *but as two other persons were in the house at the time*, (44) and as it appeared that some want of attention had occurred on their part when advised by some people of the Police, who would give evidence on the inquiry, (45) he thought an inquest necessary, to clear up all doubts. Case 2. Falling from a window.

Dr. Vos, Police Surgeon, being present, who had examined the body at the house, to which he was directed by Hamilton, a Police officer, was examined *(sworn)* as to the injuries received, and was of opinion that the man died of the different *bruises* and *hurts* which he had described, and which must have been occasioned by some external violence; and thought that a fall from the window shown to him would produce such bruises. Police surgeon examined. 1st witness

The jury then proceeded to view the body. The deceased appeared to have been an athletic and healthy man, and might have been about 60 years of age. The window from which it was said he had fallen is Jury viewed the body and premises.

amined as witnesses. Solicitors were engaged on each side, and an application was made on the behalf of the proprietors to be allowed to show the depositions to other architects, with a view to their examination as witnesses. The coroner said he would comply with the request: but the jury and coroner thought they had sufficient evidence. They were also anxious to satisfy the minds of the friends of the deceased. The coroner read over the depositions, and the jury accompanied him to view the ruins.

(43) With regard to military inquests, it is to be observed, that so much of the verdict will apply; for, after proving *death* to be *accidental*, still as all persons residing in any military bazar, &c. are bound to build securely, or repair any houses in a dangerous state, it would be proper in the inquest to record the cause of the accident, for the information of the commanding officer, that similar accidents may be avoided by the timely inspection and repair of other buildings. In the rainy season, most accidents occur to buildings belonging to the natives of India. The houses in bazars should be periodically inspected. The executive engineer or barrack-master, and brigade-major, or station staff, should inspect them and report.

(44) They might have pushed him out of the window, while drunk.

(45) They did so.

on the north side of the house looking to Pollock street, and is about 18 feet from the ground. A large puckka drain is immediately below it, across part of which is a small bridge, upon which any thing falling from the window would be most likely to alight. Some blood was observed partly on the bridge, and near it—partly on the ground. (46)

2nd witness. The evidence of *Mungul Khan*, Thanadar of the Lall-diggy division, (*sworn*) stated, that he passed the house at 11 o'clock at night. A Chokeedar (47) (Jummeer) "told me something, in consequence of which I went to the house *about 3 o'clock this morning*, when I heard much groaning from the inside. I desired Rubbyoollah and Jaun Mahommed to call to the people of the house. Mr. Money came down stairs with a light, and went into the room where the deceased lay on the floor, and spoke to him. I saw this through the chincks of the venetians. I heard the deceased say that he wanted water, and express a wish to go home. I told Mr. M. to let the man go home, or take proper care of him. Mr. M. replied, '*You go away; what have you got to do with him, Chokeedar!* the man is unwell.' This morning I received information which enabled me to report the death of the man. Mr. M. did not, when I went to the house at 3 o'clock this morning, tell me that the man had fallen out of a window."

3rd witness. "*Jaun Mahommed* Chokeedar heard groans at past 2 o'clock A. M., deceased told me he was ill. I then called to the people of the house, and somebody said, 'The man is my servant, you go away.' I went again with *Rubbyoollah*, at about 5 o'clock, and found that the man was quiet. I called out, on which Mr. M. came down-stairs, but did not open the door. I asked him how the person was who had been groaning? he said, '*He is very well.*' Mr. M. touched the deceased and shook his head; and told me he was very well; he said he was drunk. I went again at 7 o'clock, Mr. M. asked us to come in; we said

(46) It is important to ascertain the height of the fall, and whether the deceased may not, in a fit of intoxication, have jumped out of the window, and the degree of intoxication; as no one, unless very drunk, would jump out of a window to alight upon a hard pukka bridge, &c. And a question arises, was he pursued and obliged to jump out of the window, to try and save himself from violence? or had there been any quarrel between him and the other two persons?

(47) He deposed, that in going his rounds, he passed by the house. "*I heard a man groaning* in a house in Radha Bazar. I was alone, and went past *without taking further notice!*" He went afterwards with the Naib and some others. "*Some person* from up-stairs asked what I wanted. I replied that some person down-stairs was crying as if in pain. *He* asked me, what that was to me? and told me to go away!"

he was dead. Mr. M. said he was not dead, and told us the Doctor would arrive directly. We saw blood on the foot, and asked Mr. M. how that came to be there? *He then told us that the man had fallen from a window.*"

Isabella Thomas said her husband had been called out the day before by McKeina to go to a ball, to get service. Her husband was not in the habit of getting *drunk*, though occasionally got a little *tipsy;* never saw McKeina before, her husband never spoke to her of him. (*Adjourned.*) 4th witness. Adjourned.

2*nd Days' proceedings—Rubbyoollah Chokeedar*. Heard at 10 o'clock at night a man crying out in Bengalee: "I am dying, I am dying, give me little water to drink." At 2 o'clock, A. M. I went there and heard the same cries. Went again at 4 A. M. the man was still making a noise, but faintly. Mr. M. came out of the house, and said he would not remain in it, *as he was afraid!* In a few minutes we heard the noise of something falling in the house, on which Mr. M. got up and ran in. He shut the door, and I heard him lock it. I returned at daylight, the door was open, we went in; Mr. M. went to the body of a man and with his fingers opened the eyes, and declared that he was not dead. Another person there felt the wrist of the body, and said the man was alive. *I observed the traces of dragging from the street to the door, and some marks of blood.* Mr. M. took me to the north of the house and pointed to a window, one part of which was open, and said the man had fallen from that. On the ground below the window, I saw some blood." 5th witness. 2nd days' proceedings.

J. McKeina examined. Spoke to the deceased drinking brandy; he said he took the bottle from the deceased, who wished to become his servant—but his evidence was unintelligible. 6th witness.

Coroner remarks on the discrepancies, &c. of this witness, (*re-examined.*) Coroner remarks. Re-examined.

7.—*J. S. Copstack*, Joiner of the Roxburgh Castle, stated, that *McKeina, Money*, and another person (deceased) were there. Money appeared quite sober, the other person so intoxicated that he could not speak. 7th witness.

8.—*Wm. Tuck Money.* "The deceased assisted during the night in serving the people at table. About 12 o'clock at night, I was there. I went to sleep, and at 3 o'clock, the Chokeedars again called to me. I took a light, came down-stairs, and found the deceased lying with his leg broken. I found his ankle was broken. I gave him some brandy, as he complained of a pain in his stomach, and he said he was easier. I was satisfied that the man had fallen from the window, and said so 8th witness.

to McKeina, who said that the man was a drunken beast. I did not think the man much hurt, because about three years ago, a similar accident took place with myself, and received no injury. I was myself sober, and believe that McKeina was sober also." (48)

Coroner's address to jury. Verdict. Jury retired.

The coroner addressed the jury on the different bearings of the circumstances that appeared in evidence. The jury retired for about three minutes, and then returned with the following Verdict :

Verdict.

VERDICT. "*Accidental death*; the effect of a fall from a window in a state of intoxication." (*Before C. B. Greenlaw, Esq. Calcutta*, 1832.)

Arson. Case 3.

CASE 3.—*Arson*—(*lives if lost by, and supposed to be by design that the building was set fire to.*) 1.—" *James Butler* was tried in July, 1829, executed for setting fire to the floor-cloth manufactory of *Messrs. Downing and Co.* of Chelsea. He was convicted on *circumstantial evidence*, and protested his innocence to the last. Mr. A. Newman published his remarks on the case, in the (late) Morning Journal." Mr. N. thinks that he has satisfactorily proved, that the conflagration was caused by the *spontaneous combustion* of three substances, which are to be found in every floor-cloth manufactory, viz. *lamp-black, tar*, and *linseed oil*, and of which considerable quantities were discovered in the room in which the fire originated. This opinion has been corroborated by that of chemists of unquestionable talent and experience, as well as by a multitude of affidavits which are embodied in his pamphlet.

Spontaneous combustion.

Other cases. Ship Catherine. Same cause.

2.—" In March, 1826, the ship *Catherine*, from Portsmouth, arrived at Calcutta, and by her Log, dated 3rd February, 1826, it appears, that she was at one time in great danger, owing to the *spontaneous combustion* of some lamp-black on board of her. (*Lat.* 1° 37′ *N. Long.* 86° 55′ *E.*) A strong smell of burning, and an appearance of smoke, as if rising from the fore-hold, were observed by the people between the decks. The fore-hatches and fore-scuttle were taken of, when a suffocating smell of fire and clouds of smoke issued from both places. On clearing away the goods in the fore-hold, near the hatchway, it was found that a large cask of lamp-black, in the starboard wing, had taken fire, and was giving out columns of smoke. The cask, though not in blaze, was too hot to be handled. Near the lamp-black stood large jars of linseed and neats foot oil—but luckily they were removed

(48) It would appear singular that so many hours should have elapsed before they sent for a medical man, and that the Chokeedars did not at first, when they heard the groans of a person at such a house, either go in, or call others immediately, to see what was the matter—or, that the persons present did not send for them, and medical aid!

before the ignition could extend to them. There was only the one cask mentioned on fire, which, nothwithstanding the suffocating smell, the people succeeded in muffling with wet blankets, bringing to the hatchway, and hoisting on deck. It was instantly thrown overboard before it had burst into flame. Had it done so in the hold, destruction must have inevitably followed, as it and 61 casks of the same substance were surrounded by 200 barrels of tar, and upwards of 80 large jars of oil." (49) (*Calcutta Government Gazette*, 30*th September*, 1830.)

Case 4.—Beating, death by. "On the death of a widow, named Ann Watts, aged 60, supposed to have been caused through the violence and ill treatment of her son, a lad of 14 years of age, who after her death *absconded*, the jury having viewed the body took evidence. The *accused* was *present*.—The boy (*John Watts*), to whom the coroner read over the depositions, and cautioned him as to any answers he might make, as the case might be investigated elsewhere, said, "That he did not use any violence towards his mother; she had threatened to murder him, and he put her gently into the chair." Beating. Case 4. Absconding. Accused present.

"It appeared from the evidence, that the death of the deceased was caused by dropsy, to which she had a long time been subject."

Coroner addressed the jury, and said, that although a *struggle* had taken place between the mother and son, as sworn by the witnesses, and although there were *marks* and *bruises* on the hips and loins of the deceased, she might have died from *protracted illness*. If, however, they thought that the unnatural conduct of the son towards the deceased had been the *cause* (50) of death, and returned the verdict to that effect, he should commit him to take his trial." Coroner.

(49) "There was no doubt of the spontaneous ignition of the substance, since no other apparent cause for the phenomenon was discovered; and no *light* had ever been suffered in the hold, since the ship left England. So many other casks of the same material being on board, it was considered absolutely necessary for the safety of the ship and crew, to throw the whole into the sea. Two other casks were observed to smoke, while floating past the ship."

"The liability to spontaneous ignition of this substance was not a fact familiar to the minds of either judge or jury. *Dr. Gordon Smith* was in court up to a certain stage of the trial." Since the event he has declared, "I regret I did not send a note to Butler's counsel, requesting him to examine *Mr. Downing*, as to the nature and quality of the materials used in his business; as to the circumstances in which they were placed, at, or previous to the time of the conflagration; and to the attorney to desire some experienced chemist should be brought into court. The lad might have been saved, had his counsel and attorney been in conference with intelligent persons of this description, *previous to the trial*."

(50) "If a man be sick of some disease, which, by the course of nature, might

Deliberation. Verdict.

Verdict. The jury remained in deliberation nearly two hours, and returned a verdict,

"*Died by the visitation of God;*" at the same time, they conveyed their indignation of the unnatural conduct of the son and daughter towards their deceased parent. (*Held at the Rose and Crown, Sir Street, Lambeth Walk, before Mr. Carter, Coroner for Surrey.* Times, 10th October, 1829.)

Case 5. Beating with a stick.

CASE 5.—BY BEATING WITH A STICK. This is the celebrated case of inquest held on the *skeleton* of Richard Hemming, (the murdered murderer,) who murdered the Rev. Mr. Parker, on the 25th June, 1806. (51)

1st witness, medical.

Mr. Pierpoint, Surgeon of Worcester, (*sworn.*) He had heard that the murder was supposed to have been committed with a *blood-stick*. They are commonly made of *box, yew,* or other *hard heavy woods,* and had a round knob at one end. He had seen some with a covering of *lead* round the knob. (52) He had no doubt but that with the hat off, and in the position in which *Hemming* was described to have been when the blow was struck, a common blood-stick would have been sufficient to have produced the fracture in the *skull of* the *skeleton* he examined. He did not think one blow would have been sufficient, for the skull was fractured not only at the *top*, but also *down to the base* on which the *brain rests*. He thought the fracture might be produced by two or three blows. At that moment he could call to mind no instrument more calculated to produce the fractures he had seen, than

possibly end his life in half a year, and another gives him a wound or hurt which hastens his death, by irritating and provoking the disease to operate more violently or speedily, this is murder or other homicide, according to the circumstances (if malice express or implied murder, (Russell, vol. i. 421,) in the party by whom, such wound or hurt was given. For the person wounded does not die simply *ex visitatione Dei*, but his death is hastened by the hurt which he received; and it shall not be permitted to the offender to apportion his own wrong." (1 *Hale*, 428. *Lord Hale says, that thus he had heard that learned and wise judge J. Rolle, frequently direct.*) Russell on crimes, &c. vol. i. 429.

(51) The skeleton of Hemming was found accidentally on pulling down a barn at Netherwood, belonging to T. Clewes: the production of Hemming's *rule* (who was a carpenter) led first to the discovery. Mr. Parker, was shot at *Droitwich.* The *confession* of Thomas Clewes implicated himself, Captain Evans, who died in May, 1829, aged 95, Mr. George Banks, a farrier, named Taylor, (then dead,) and John Barret, in both murders. The confession of Clewes was taken on a *Sunday*, by the Rev. R. Clifton, at Worcester. The *witnesses* examined were John Clewes, the elder-brother of Thomas Clewes, William Barnett the brother of John Barnett, Mrs. Diana Clewes, the wife of Thomas Clewes.

Witness.

(52) Lathees in India have *iron* round the end, and are very heavy and dangerous instruments.

a blood-stick. A blood-stick, being round and not over-heavy, would be well calculated for fracturing the bones of the skull without breaking the skin, so as to cause an effusion of blood. A heavier angular instrument would most likely have broken the *skin* as well. In the situation in which *Hemming* was said to have been, (with the back of the head towards the blow,) he thought one blow would have been sufficient to have *stunned* him; so as to have deprived him of the *power* of speech. (*Adjourned to take refreshment, evidence being concluded.*) Adjourned.

Depositions read to accused in Jail. The coroner and jury proceeded to the jail, and read the depositions to *Clews and Banks*, (53) after which they returned to the Talbot Inn, and the room having been cleared of all strangers, the coroner summed up. Doors opened an hour afterwards. Depositions read in jail to the accused. Coroner sums up.

VERDICT.—"Thomas Clews, otherwise Clewes, and George Barnett, guilty of the wilful murder of Richard Hemming, and John Barnett guilty of the wilful murder of the same individual, as an accessary before the fact." Verdict.

Commitment. The coroner instantly issued his *warrant* for the *full* commitment of the three above-named persons, and agreeably to the prison regulations, they were made to assume the prison dress. (Yellowish velveteen, and cap to correspond). They were confined in *separate* wards. Previously they had been allowed wines, or whatever refreshments they thought fit to send for, except *spirits*. (*At Worcester, before W. Smith, Esq. Coroner, Globe, 1st to 6th February,* 1830.) (54) NOTES were taken by the jury in this case, and should be in intricate cases. Commitment.

(53) John Barnett refused, as he had heard their contents from his solicitor. All three prisoners were kept separately, but brought together to hear them read. *Clewes's* confession accused *Bankes* of being in the barn when Hemming was murdered. The governor of the jail (Mr. Lavender) recommended them not to recriminate, but reserve what they had to say for their defence.

(54) They were tried and acquitted. As to *skeletons and bones*, see the case of Eugene Aram, who, with Richard Hunseman and Henry Terry, were indicted at York, 3rd August, 1759, for the murder of Daniel Clarke, in the night between the 7th and 8th of February, 1744-5. Hunseman was first tried and acquitted, and was admitted as evidence against *Aram* and *Terry*. Terry was acquitted, *Aram* found guilty. He tried to commit *suicide*, but failed, and was executed. (See Celebrated Trials, vol. iv. pp. 243 to 253, and his able defence as to the possibility of the bones not being *human*; that another skull had been found there, sworn to be *Clarke's*; that as to the skull produced, was the fracture the cause of death? (meaning, that it might have been fractured by accident, and still the person die a natural death,) alluding to there being, anciently, cells for the bones of the dead, and why might not these (*Clarke's*) be such. That though last seen with Clarke, that

Case 6. Death caused by a maniac.

CASE 6.—Death of a dancing girl, named *Emamon*, aged 16 years, by a *maniac*. The inquest was held on the view of the body, at the Native Hospital, and which, from the rapid state of decomposition, had become offensive. After seeing the corpse they adjourned to an adjoining apartment; when the evidence of Mr. Steers, head assistant at the hospital, was taken. The jury adjourned to the house of the coroner, where Dr. Vos was sworn and examined. The *maniac*, (*Akbar Ally*,) killed the girl with a sword (produced). The evidence went to show that the man was disturbed in mind. His wife informed witness some time before that her husband would not eat or drink, and that he constantly entertained apprehensions that the Bengalees would kill him.

Body decomposed.

Evidence.

Coroner.

The coroner observed, it was very evident the death was caused by a wound inflicted by *Akbar Ally*. It was unfortunate the accused could not be produced before the jury: the measures adopted by the *magistrate* rendered that impracticable, except by an application for a *Habeas Corpus*. The only question for the jury to decide was as to the state of mind of this unhappy man was in, at the time he inflicted the wound; whether in fact he was or was not *insane*."

Accused in confinement.

Habeas Corpus.

Verdict.

The jury unanimously returned a verdict, "That Akbar Ally, while in a state of *insanity*, killed the deceased Emamon." (*Before C. B. Greenlaw, Esq. Coroner of Calcutta, 22nd June*, 1830.) (55)

Case 7. Drowned falling out of a boat.

CASE 7.—DROWNING BY FALLING OUT OF A BOAT. *Mr. M. B. Morrison* and Mr. Shiels, (who were both in liquor,) took a boat at

was not to the point, as in June, 1757, Mr. Thompson escaped from York Castle, though double ironed, and in broad day, and though inquired after immediately, and strict search made, and his escape advertised, he had never been seen or heard of since, and with more ease might Clarke have got off unseen; (pp. 250, 251,) see also Mr. Bulwer's Novel, entitled "*Eugene Aram.*" Eugene Aram was a learned man. See an account of him in *Annual Register*, vol. ii. 1759, p. 361. He confessed the murder.

Murder accidentally found out.

In the year 1822, the murder of the *Marrs*, (Ratcliffe Highway, and of the *Williamsons*, in the same neighbourhood 11 days after) took place. Mr. Marshall, a magistrate in the county of Buckingham, accidentally found out a man who confessed that he was concerned in the murder, (*Marrs*.) Mr. M. wrote to Sir R. Birnie, to send a police officer to Shadwell, to make inquiries. Sir R. B. in searching his *Diary* found that the *Marrs* were murdered on the 7th and *Williamsons* on the 18th December, of the same year. He was tried, but acquitted.

Diary.

(55) In the case of James Hadfield, who fired at the king, (Geo. III.) tried 26th June, 1800, he was found not guilty, being *insane*; and the Act 40 Geo. III. c. 94, for the case of insane persons passed. He was remanded to Newgate, and till 1824, kept in Bedlam. *State Trials*, xxvii. 1356, (he is since dead.) There is an Insane-Hospital in Calcutta.

Howrah to go to Chandpaul Ghaut. It appears there had been a slight dispute between them at the house of Mr. ——— at Howrah, and a witness said that Mrs. ——— said to Shiels, when Mr. S. went back to Howrah to mention the melancholy event, "You threatened him last evening:" this led to a *suspicion*. Mr. S. who was present at the inquest, requested Miss ——— (the daughter), might be called. Miss ——— being sworn, declared that what escaped her, was said in a moment of excitement, and that she had no grounds for it. Evidence. Suspicion.

The jury expressing an opinion that no suspicion attached to Mr. S. he was examined. Jury.

Mr. S. being sworn, stated that on arriving with the boat between Colvin's and Chandpaul Ghaut, he struck it against the wall, and desired the deceased to get over the railings, and on springing up the boat rebounded and shot out. "I saw him clinging for a few seconds and then fall. He struck out, and I heard him making a noise as if the water was going into his mouth." He dived twice, but could not find him; and called out for assistance. This occurred at night. (56) Suspected examined.

VERDICT. The jury, after a few minutes consideration, found, "That the deceased, Mr. Morrison, was accidentally drowned. (Before C. B. Greenlaw, Esq. Coroner, Calcutta, November, 1829). Verdict.

CASE 8.—DROWNING BY JUMPING OVERBOARD. A soldier, *John Billingslay*, was found drowned in the river Hooghly, (they had embarked to proceed up the country.) (57) Drowned by jumping overboard. Case 8. Evidence.

Henry Martin (sworn), a soldier in His Majesty's 38th Foot. At 6 o'clock in the morning, he saw the deceased (Billingslay), who was then intoxicated; no conversation took place between the deceased and any other person. Between 8 and 9 o'clock, the deceased and witness were alone at the head of the boat, when he took off his clothes, and jumped overboard. Witness looked after him, but did not see him rise, when witness thought he should rise, and went and asked the other men, "if the prisoner could swim;" they said they believed not: witness was not aware that he had any *disagreement* with any one. Witness is quite sure that the body is that of the deceased, John Billingslay. Before he jumped overboard, witness stated, he observed some of the people desire him to wash himself as he was dirty; he replied, that "he would do so." (The rest of the other evidence only as to a report of the act to the Serjeant-Major). The Coroner charged Coroner.

(56) "Mr. S. swam out, and was picked up himself by a boat from the *Protector*."

(57) The jury proceeded to view the body, and returned to examine evidence.

the jury, who immediately returned a verdict, "that he, the deceased,
Verdict. met his death by having jumped over board in a state of *mental derangement*." (*Before C. B. Greenlaw, Esq. Coroner of Calcutta, 19th November*, 1830.)

Case 9. Drowned by boat sinking. CASE 9.—DROWNING BY A BOAT SINKING. Inquest held on the bodies of *Daniel Riley and Wm. Cuthbert*, privates in His Majesty's 38th
1st witness. Foot. *John Grove*, Corporal, His Majesty's 38th Foot, sworn. They embarked to proceed up the country on the 17th instant, there were 11 men in the boat. At a ¼ before 11 (*night*), witness' wife told him that she heard water rushing into the boat. He perceived the water coming in very furiously. He instantly gave the alarm, and the people endeavoured to save themselves. Witness got on the top of the boat, and the deceased *Riley* remained below to save his wife and two children; he assisted them to the top of the boat where witness was, and where he helped them. After they were up his wife called to him, and he replied, "Yes," two or three times, but they never saw him again alive. Witness was present when the two bodies were recovered from the boat at about half past 7. When witness went into the boat, he examined it, and, as far as he could judge, the boat was a good and sound one. He could give no account how the boat sunk. He did not hear the persons complain that the boat was unsafe. Two natives were brought into the boat last night, one very sick, the other blind. Witnesses suspected they were there still. The water rushed into the boat. The moment the alarm was given, the boatmen left it." (58)

Adjournment. The court adjourned till Monday, 22nd November, 1830.

2nd witness. *Frederick Alexander Cornabe*, sworn, (Assistant Harbour Master, residing at the Cooly-bazar). "Witness raised the boat which had sunk about four nights ago. Knows it to be the same in which two soldiers were drowned; there was no other body found in it: she is now afloat. Witness discovered no damage in the boat by which she could have been sunk; she was very sound. Where she sunk is about 18 feet from the bank of the river. As they raised the boat up, gradually they baled the water out, so that witness would have been able to have seen if there had been any place which would have caused a *leak*. The boat was lying with head in towards the shore, having about two fathoms more water at the stern than at the head. The boat is now fit for actual service."

(58) The dandies should be prevented doing so. Whenever a boat is in danger, they leave it. In case of a storm they should be looked to.

The coroner charged the jury, who returned the following verdict: "The deceased Daniel Riley and William Cuthbert came to their death, by the accidental sinking of the boat in which they had been embarked, and levied a *deodand* of 100 rupees on the said boat." (*Before C. B. Greenlaw, Esq. Coroner of Calcutta, 29th November,* 1829.) (59) Coroner. Verdict. Deodand.

CASE 10.—DROWNING HIMSELF IN A WELL. An inquest, held at Mahim Court Warree, on the body of *Dundee Buddin*, a sepoy in the Custom-House. It appeared that he had been drinking and merry-making at some festival, returned home to his wife, left the house again, and next morning his wife with others, went in search of him, and it being reported that a man was found drowned in a well, the body found proved to be the husband. He had on all the clothes he wore the day before: (he was in the habit of making free with drink on such occasions). VERDICT, "*Found drowned.*" (*Bombay, 3rd July,* 1832.) (60) Case 10. Drowning himself in a well. Verdict.

CASE 11.—DROWNED AT SEA. A coroner's inquest, held on the body of *John Jones*, apprentice of the Rambler Fishing Smack, 21st March, 1827. A doubt arose whether the deceased, having expired off the coast of *Holland*, it did or did not fall within the coroner's province to go on with the inquiry; and until this was solved, he declined proceeding any further. To remove this, he thought it necessary to apply to the Lords of the *Admiralty*, and having discharged the jury, a letter was dispatched for their Lordships' opinion. An answer arrived in due course, that he was fully competent to hold the inquest. (*Naval and Military Magazine, No. 2, June,* 1827, p. 615.) (61) Case 11. Drowned at sea. Jury discharged.

(59) There should be *life-preservers*, such as the *Chinese* use. See description of them in Chapter VII.

(60) There are many dangerous wells, often, in bazars and cantonments. At night, in particular, a grating should be placed over them.

(61) "Where the jurisdiction of the County and of the Admiralty is concurrent, the coroner who first seizes the body is entitled to take the inquisition. When a body was lying dead on board a ship in *Portsmouth Harbour*, (*infra Corpus Comitatus*,) the Court of K. B. granted an information against the Captain for obstructing the coroner of *that place*; no previous inquest having been taken by the coroner of the *Admiralty*." (*Jervis's Coroner*, p. 48.) C. B. Greenlaw, Esq. is coroner of Calcutta, and there is no other coroner; so he has jurisdiction in *all* cases. With regard to the question as to whether a body found drowned was or was not caused by the act of another, the appearance of a body *accidentally* drowned, and drowned by the wilful act of another, arose in the trial of *Spencer Cowper*, Esq. for the murder of *Sarah Stout*, at Hertford, 1699. The body was a quakeress, and the family were desirous to remove the stigma as to her being with child; to remove which, the body was disinterred after it had been buried six weeks. There As to body drowned by deceased or by others.

Case 12. Death by drinking.

CASE 12.—DEATH BY EXCESSIVE DRINKING.

1.—The crime of drunkenness is but too common among soldiers and other Europeans. "An offender under the influence of intoxication can

Dr. Garth. is no doubt that she did drown herself. *Dr. Garth* said that as all the witnesses agreed she was found upon her side, it was as hard to conceive how she should float in this posture, as that a deal board should float edgewise: therefore it was plain she was entangled, or the posture would have been otherwise.

Strangled body. If a *strangled* body be thrown into the water, the lungs being filled with air, and a cord left about the neck, it is probable it may float, because of the included air, (this Mr. J. G. Smith says not, p. 280).

Dr. Morley. *Dr. Morley* said, "If this gentlewoman did voluntarily drown herself, she then, in all likelihood, threw herself into the water with a resolution of keeping her breath for a speedy suffocation, and then, if upon the first endeavours for respiration, (which naturally must be,) she drew into her lungs two ounces of water, it was the same thing as to drowning of her as if there had been two tons." "We drowned another dog, and he lay at the bottom, and did not float; no more would he have done, if he had been *hanged* before thrown into the water. We took him up, and opening him, we found much about the same quantity of water in his lungs, and little or none in his stomach; thus both (dogs) frothed at nose and mouth, *because the water coming into the little bladders of the lungs, and there meeting with air, a connection arose between the water and air which caused the*

Froth. *froth*." "I think if bodies newly killed swim, it is by accident; *for the reason that bodies swim is because by putrefaction they rarefy: by rarefaction they grow lighter, which brings them to the top of the water.*" ("When the air of the lungs is expelled, and probably, at the same time, a certain quantity of water is taken into the stomach, the body becomes specifically heavier, and the victim sinks. It may be assumed as a general rule, that no newly-drowned body floats, although many facts have been adduced in support of a contrary opinion. The naval custom of loading the dead bodies with weights, before they are consigned to a watery grave, is not for the purpose of sinking the corpse, *but for preventing its rising after the process of putrefaction has commenced.* The period during which a body will remain at the bottom cannot be very accurately determined, as the change does not take place until a sufficient quantity of air be generated to bring it again to the surface; in the loss of the *Royal George*, the dead bodies were observed to ascend to the surface of the sea, on or about the 5th day, (*query*, would they not be longer in *fresh water?*) The general position of a body which has thus risen, provided there be no external or adventitious circumstances to change it, is such, that it floats nearly immersed, the *face, arms*, and *legs* hanging downwards, and the *loins* uppermost; this is the form which the body must *mechanically* and *hydrostatically* assume, if the sustaining power of generated air be, as it generally will, in the *cavity* of the *abdomen*, where putrefaction is more likely to commence; for the *head* and *limbs* are generally specifically heavier than water, while the *trunk*, especially if inflated with air, is somewhat lighter." (*Paris and Fonblanque, vol.*

Mr Cowper. ii. *pp.* 40, 41.) *Mr. William Cowper*, (Surgeon.) "It happened that a spaniel, that had a great deal of long hair, was hanged for this purpose, which I found swam on the surface of the water; but when I caused another dog with shorter and less hair to be hanged and put into the water, which (agreeably to what I had

derive no privilege from a madness voluntarily contracted, but is amenable to the justice of his country, equally as if he had been in the full possession of his senses at the time." (1. *H. P. C. &c.*) Insanity produced by

2.—" Neither will he be liable to punishment for the commission of any crime perpetrated under the influence of insanity which is habitual and fixed, though caused by frequent intoxication, and originally contracted by the vice and will of the party." (1. *H. P. C.* 32.) (62)

3.—" The forcing another to drink spirits to excess amounts to murder." (63) And if two men agreed to drink till one or the other died, and encouraged each other, the crime would seem to amount to more than a misdemeanor in the survivor. (64) Forcing another to drink.

always conceived of a human body) sunk directly to the bottom." " *Ambrose Pare* (Chief Surgeon to Francis I.) tells us, that the certain sign of a man's being drowned, is an appearance of *froth* about his *nostrils* and *mouth.* Now, I think that every one of the king's witnesses observed it in the present case, and a woman swore that she saw her (*Strout*) *purge at the nose; which could not be, as he declares, if the person had been strangled, or otherwise killed before.* It appears that no part of her body was above water, but only her clothes; there were no bruises about her, her eyes were open. (*S. T.* vol. i. p. 116.) *(See, for this interesting trial, State Trials,* vol. xiii. p. 1106, *et seq. Celebrated Trials,* vol. iii. p. 213, *Beck*, p. 299, *J. G. Smith*, p. 268, *Paris and Fonblanque*, vol. ii. p. 38; iii. p. 39.) Froth.

Sarah Walker, servant of the deceased, stated, that at 11 P. M. she left the room; at a quarter of an hour after, she heard the house door shut; coming into the parlour at quarter of an hour after, she found nobody there; both Mr. Cowper and her mistress were gone, and she never saw her more alive, (p. 217.) *Eliz. Spurr* proved that Mr. C. came back to his inn just as the clock struck 11, and Mr. C. said it would take above half an hour to go from Mrs. Strout's to the place where she was drowned and return to Glove Inn." (*Celebrated Trials*, vol. iii. p. 238.) Sarah Walker. Eliz. Spurr.

(62) Jervis's Coroner, pp. 92, 93.

(63) Jervis, p. 340. The persuading or encouraging another to drink to excess would seem to be a misdemeanor.

(64) " Two persons went to the Thames to drown themselves, a man and a woman. The woman was drowned, and the man tried for murder. The man told the magistrate he intended to drown himself, but dissuaded the woman from following his example. The judge told the jury that if they believed that the prisoner only intended to drown himself, and not that the woman should die with him, they should acquit the prisoner; but that if both went into the water for the purpose of drowning themselves together, each encouraged the other in the commission of the felonious act, the survivor was guilty of murder. That although the indictment charged the prisoner with throwing the deceased into the water, yet if he were present at the time she threw herself in, and consented to her so doing it, the act of throwing was to be considered as the act of both, and so the case was reached by the indictment. The jury stated that they were of opinion that both the prisoner and the deceased went into the water for the purpose of drowning themselves; and the prisoner was convicted."

Verdict. VERDICT.—"That the said A. B. on the —— day of — 183—, in the cantonment, &c. of ——, died by excessive drinking; and not from any hurt, injury, or violence done or committed to the said A. B. to the knowledge of the court." (65)

Case 13. Found dead. CASE 13.—FOUND DEAD. If a person be found dead, the court having ascertained by witnesses that no violence has been offered to the deceased, by examining his relations, friends, acquaintances, or comrades, (66) as to how and where the body was found, and there being no suspicion of violence having been used, should return the following Verdict.

Opinion of the Judges. "It was referred to the *judges*. The *judges* were clear that if the deceased threw herself into the water by the *encouragement* of the prisoner, and because she thought he had set her the example in pursuance of their previous *agreement*, he was a principal in the second degree, and was guilty of *murder*; but as it was *doubtful* whether the deceased did not *fall in by accident*, it was *not murder* in either of them, and the prisoner was recommended for a *pardon*." (*Rex v. Dyson, Mich. T.* 1823, *Russ. and Ry.* 523.) Russel on Crimes, &c. vol. i. pp. 430, 431.

Prisoner if drunk. *Intoxication*, in the case of the man might alter the case. "And, though voluntary drunkenness cannot excuse from the commission of crime, yet where, as upon a charge of *murder*, the material question is, whether an act was *premeditated* or done only with *sudden heat* and *impulse*, the fact of the party being *intoxicated* has been holden to be a circumstance proper to be taken into consideration." (*By Holroyd, J. in Rex v. Grindley, Worcester Sum. Ass.* 1809, *M. S.*) Russell, vol. i. p. 8. In the case of the above man, he had cohabited with the woman, and she was with child by him; they were in a state of *extreme distress*. (*Russell*, vol. i. p. 430.)

If therefore, an *encouragement* applies to the case of *drowning*; by parity of reasoning it will to *other cases* wherein the destruction of life ensues!

(65) If the party superinduced a fever by the drinking and survived several days, the verdict might declare the deceased to have died of a fever, caused by intemperance. If the court find the party to have "committed *suicide* while sane, the body must be interred after night-fall, without funeral rites, or any military honors whatever." (*G. O. C. C. 24th September*, 1829.)

Treatment of drunken persons. *Treatment of drunken persons.* "In the first instance we should endeavour to evacuate the stomach; for which purpose a brisk *emetic* of *sulphate of zinc*, or *tartarized antimony* may be administered. Blood should also be taken from the jugular vein, or temporal artery; more especially if there appear a considerable determination of blood to the head. The head should also be washed with cold water, or some evaporating lotion. The patient should be carefully preserved in a warm atmosphere; and his body should be placed in an easy reclining posture, and be disincumbered of all *tight bandages*. These precautions are of the utmost moment, for many of those cases of inebriety which stand recorded, have terminated fatally for want of attention to them." (*Paris and Fonblanque*, vol. ii. p. 439.)

(66) Examine his messmates, shipmates, &c. non-commissioned officers of company, &c.

VERDICT.—That the said A. B. on the —— day of — 183—, in the cantonment of ———— (or in a certain bazar, &c.) was found dead; and that the said A. B. had no marks of violence appearing on his body, but died by the visitation of God, and not by any violent means. (*Jervis*, p. 381.) (67) Verdict.

CASE 14.—DUELS, DEATH BY. Whenever any person dies in consequence of a duel, on a report to the coroner he holds an inquest.(68) Case 14. Death by duels.

As to whether the case amounts to *murder* or *manslaughter*, depends upon circumstances. In the case of the duel which took place between Major Campbell and Captain Boyd, of the 21st Foot, in the county of Armagh, side of Newry, he was tried for the *murder* of Captain Boyd, at the Armagh Assizes, in the summer of 1808."(69) Major Campbell's case.

"The cause of quarrel arose at the mess-table, as appeared from the evidence of *Mr. Assistant Surgeon George Adams*, of the same regi- 1st witness. Cause of quarrel.

(67) In case of NATURAL DEATH. "That the said A. B. &c. died of *asthma, fever*, &c. and not by any violent means." (*Jervis*, 381.)

(68) "That the coroner, upon information, shall go to the place where any be slain, or suddenly dead or wounded, and inquire where the person was slain; and if any and who were there." (4 *Edw.* I. *St.* 2.) Jervis, 21.

Military inquests are not on *oath*, those of the *coroner are*, and upon his return of the deposition to the clerk of the crown, the party killing would be put on his trial. In military cases an inquest would be taken and the proceedings sent to the general officer commanding the division, and by him forwarded to the adjutant general of the army, for the information of the Commander-in-chief. Whether a trial took place or not, would rest with him. If friends or relations desired it, I think it would never be refused: the party killing indeed should ask for one, to prove the fairness of the duel. When two officers fought a duel and one was killed at Barrackpore, the party killing was not tried, I understand, as the friends did not ask for a trial, and the civil power said they did not originate trials in such cases. Case 1.

In the case of an officer of the *Isis Frigate*, killed in a duel at the *Mauritius*, (9th July, 1832,) the principal and both seconds were apprehended, and an examination took place before *M. Debesie*. On the 15th December the President of the tribunal, after having heard the *depositions* of all the witnesses, gave judgment to the effect, that seeing all that passed in this unfortunate affair, was conformable to the rules observed in meetings of a similar nature, and according to the laws of honor; seeing that no blame could be attached to any of the accused parties, and for other reasons, it is ordered that the officers under confinement be immediately set at liberty." (*Cernéen, 14th to 18th December*, 1832.) Case 2.

In the case of an officer of the *Curacoa Frigate*, who killed another in a duel at *Singapore*, he and the seconds were tried at Bombay and acquitted, (February 1833.) Case 3.

(69) "He made his escape from Ireland after the duel, and lived with his family, under a fictitious name, in Chelsea; but his mind became so uneasy that he at last determined to surrender himself."

ment. This stated Major C. first quitted the mess-room and went home, drank tea with his family, and gave witness (*John Greenhill*) a box to leave with Lieut. Hall, before the affair took place—this was evidence to prove that Major C. had time to cool after the altercation took place."

2nd witness. "*John Uvey*, Mess-waiter, proved that the duel was fought with pistols, in so small a room that as they stood each in a corner, the distance only measured seven paces; witness heard the report of a shot, but thought nothing of it till he heard another." (70)

Words of the dying person killed. (70) There were no seconds. *John McPherson*, a Lieutenant of the regiment, heard Major C. say—"on the word of a dying man is every thing fair." He got up before Captain B. replied. He said, "Campbell, *you have hurried me, you are a bad man.*" Campbell said again, "Boyd, before the stranger, and Lieutenant, was every thing fair?" Captain B. replied, "Oh no, Campbell, *you know I wanted you to wait and have friends!*" Major C. then said, "Good God! will you mention before these gentlemen, was not every thing fair? Did not you say you were ready?" Captain B. answered, "Yes;" but in a moment after said, "Campbell, *you are a bad man!*" Captain B. was helped into the next room, and Major C. followed, much agitated, and repeatedly said to Captain B. that he (B.) was much the happier man of the two. I am, exclaimed Major C. an unfortunate man, but I hope not a bad one. Major C. asked Captain B. if he forgave him. He (B.) stretched out his hand, and said, "I forgive you, I feel for you, and am sure you do for me." Major C. then left the room. (*The judge laid great stress* on the words in *italics.*)

Verdict. Verdict.—The jury retired, and after remaining out of court about half an hour, returned with their verdict, *guilty of murder*, but recommended him to mercy. (He was respited, but though many petitions were presented in his favor, he was executed on 24th August, 1808.) *Celebrated Trials*, vol. ii. pp. 32—27. See *McArthur*, vol. ii. p. 248. *Samuel*, 391. See State Trials, *Lord Mohun* (*A. D.* 1694,) vol. xii. p. 949, acquitted, vol. xii, 1033, unanimously acquitted, 1059, (*another duel*) *Warwick and Holland* lived (A. D. 1699,) xiii. 939. Acquitted of *murder*, but found guilty of *manslaughter*, 1031. Lord Byron's case, xix. 1177, (A. D. 1765.) Acquitted of *murder*, but guilty of *manslaughter*, 1233.

Cases in state trials.

Other cases. 1st case, 1782. Other cases 1.—In the case of the Rev. Mr. Allen, for killing Lloyd Dulany, Esq. in a duel; O. B. 5th July, 1782. *Provocation* was a par. written by the deceased *three years before!* (Robert Morris, Esq. second to Mr. A. Mr. Delaney, second to Mr. D.) Mr. D. called Mr. A. a *liar and assassin.* They all except Mr. A. met at a gunsmith's to get A.'s pistols charged. At half-past 9 in the evening, after measuring eight yards, discharged *each* their pistols, when the deceased fell. Mr. Delaney said, Mr. Morris repeatedly urged the *deferring* the duel till next day. *Lydia Lepine* and two others saw Allen shooting at a *mark*, in a field, with pistols the same day (*Morris* was tried also).

J. Buller summed up and said: "Where two persons deliberately meeting to fight a duel, and one was killed, both principal and second are guilty of *murder*."

Verdict. Verdict.—*Allan* guilty of *manslaughter*; *Morris*, not guilty. Sentence: a fine

CASE 15.—FIRES, LIVES DESTROYED BY. A fire took place at Fetter Lane, London. The coroner and jury (18) viewed two of the bodies at St. Bartholomew's Hospital, and five bodies burnt to death at the undertaker's, and adjourned to the hospital to take evidence. (*Before Mr. Payne, Coroner, 18th April,* 1830.) Case 15. Lives lost by fires.

CASE 16.—FURIOUS DRIVING. An inquest was held at the *Turf-Tap,* Tattersall's Yard, on the body of *Mr. Thomas Payne,* aged 55. The deceased was driving a gig, and was met by the Earl of Chichester's carriage, the coachman drunk, and drove over deceased, and went over his body, broke five ribs, &c. the liver greatly lacerated, which caused his death. Case 16. Death by furious driving.

VERDICT.—Manslaughter against the coachman, William Marshal, who was committed to *Newgate* for trial. Verdict.

CASE 17.—FELO-DE-SE, HANGING HIMSELF. An inquest was held on *Sunday* last, (71) at the Prince of Wales' Inn, Russel Street, on the Case 17. Hanging himself.

of one shilling and imprisoned six months. (*Annual Register,* vol. xxv. p. 213, *Chronicle.*)

2. A duel was fought at Bombay in 1801, between Lieut. B. and a Mr. F. The latter was shot and died. The survivor and his second, a Captain R. were both sentenced to be *transported* to *Botany Bay,* the former for 14, and the latter for seven years. (*Annual Regulation,* 1802,) (*January,*) p. 354, *Chronicle.*) 2nd Case in 1801.

3. Duel between *Lieutenant-Colonel Montgomery, and Captain Macnamara,* R. N. The dispute was about a dog, and high words arose. They fought next morning at the distance of six yards. (*Jury retired for about 20 minutes.*) 3rd Case in 1803.

VERDICT.—"Not guilty." (*Celebrated Trials,* vol. v. p. 444.) *Mr. Heaviside,* the Surgeon present, was tried and acquitted. *McArthur,* vol. ii. p. 247. Verdict.

(71) Should not be held on a *Sunday.* Jervis, p. 212. The above is a case of practice. In *India* they *must,* in hot weather, be held on a *Sunday,* as the body will not keep. "*Necessitas non habet legem,*" is a law maxim. "Therefore if there be an impossibility for a man to do otherwise, such *necessity* carries the privilege in itself." (See *Bac. Elem.* 25—29. Tomline's Law Dictionary, "*Necessity.*")

In *England,* bodies are usually kept a week. In *India,* the body may not be found for a week: therefore, "*de necessitate rei,*" they must in India, be held on a *Sunday* if the body will not keep. I would record the *necessity* and *cause* on the proceedings of the inquest. The rule should be altered to any day, to view the *body,* but as to other evidence—inquire next day. In case 17, there might, if no necessity existed, be a doubt as to the legality of the *forfeiture.*

As the head was not opened who can say if this man was not *insane.* A brain fever might have caused a delirium; and what human being can say when God afflicts any one with *insanity.* If there be insanity it must have a commencement, and who can say when it began. It is not the absence of worldly cause to derange the mind; may not some internal, unknown, disease have disturbed the *viscera,* or some hidden cause which without dissection cannot be known; and which even with dissection may baffle the skill of the most eminent. "*Judge not that ye be not*

body of *Peter Chaff*, a blacksmith, who terminated his existence on the above morning, by hanging himself in his bed-room, Willow Street. The inquisition occupied upwards of four hours, but, as no evidence

Verdict. Felo-de-se.

was adduced of *insanity* in any degree, the jury returned a VERDICT of *Felo-de-se*. The *funeral*(72) took place privately at the burial-ground of the Parish of Charles, in pursuance of the coroner's warrant, soon after 9 o'clock on Monday night, being in conformity with the act, 24 hours after the inquest. (*The town-serjeant took possession of his goods and chattels, such being forfeited to the Crown.*) The deceased was a *widower*, and left *three young children* to lament the untimely end of their parent. (73) *At Plymouth*, before R. J. Squire, Esq. Coroner for the Borough. *(Plymouth Journal, August*, 1831.)

Case 18. Vicious horse, placing on, Death by.

CASE 18.—HORSE, DEATH CAUSED BY PUTTING A PERSON ON A VICIOUS HORSE. This case was an inquest on the body of a woman who possessed money, and had just married a man named *Swearingen*. He put her on a vicious horse, and the body was traced by the road which he and the woman had first taken, and by marks of blood. His different accounts of her death were suspicious: to some he said she was killed by her horse falling with her, to some that she was killed

Held on a Sunday.

judged." (Matt. vii. 1.) "*His ways are past finding out.*" (Rom. xi. 33.) An inquest was held on the body of *Robert McCay*, on *Sunday*, 10th February, 1833, (*Belfast Chronicle.*) Times, 12th February, 1833.

(72) "To be buried privately (without any state, &c.) in a church-yard, within 24 hours from the finding of the inquisition, and between the hours of 9 and 12 at night; but the statute does not authorize the performing the rites of Christian burial. (Blackstone, iv. 190, n. (14.)

(73) "It seems clear that a *felo-de-se* forfeits all chattels *real and personal* which he has in his own right; all chattels real which he has in right of his wife, or jointly with her; all bonds and other personal things in action belonging solely to himself; all entire chattels in possession, to which he was entitled jointly with another on any account, except that of *merchandize*; and a moiety of such joint chattels as may be severed (1 *Hank. P. C.* c. 27. *s.* 7.) But for the future does not extend to possessions *in autre droit*, as executor, administrator, or guardian, for these he has not in his own right." (*Plowd.* 261, *Co. Litt.* 84, 88.)

"Neither is the blood of a *felo-de-se* corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower." (1 *H. P. C.* 413. *Plowd.* 261, 262.) Jervis, p. 114.

Objection to.

Thus a man's *partner* saves his property, and the *widow* her *dower*. In the case of a poor man, the Crown takes his goods and chattels, and thereby the poor-rates of the parish are increased. This act is unchristian-like in the 19th century, and requires reform; and seems against Scripture, (*James* i. 27.) It is visiting the sins of the father on the children, when they have sinned not, but are sinned against.

dead, to others that she was killed by falling from the horse after he had put her on, to take her to a place of safety; and other accounts, &c.

1st Inquest. Verdict.—"That she came to her death by the act of providence." (74) 1st Inquest Verdict.

2nd Inquest.—"The body was *disinterred* and examined by physicians, who at first thought that from the putrescent state of the body, it was impossible to assign the cause of her death, and gave such an opinion in writing to the inquest. They afterwards came to the conclusion, that her death was occasioned by suffocation." (75) 2nd Inquest.

Trial.—He was tried, convicted, and executed. (*Hagerstown Torchlight, (America,) 2nd September,* 1829.) (76) Trial.

(74) Held the next day. "The grounds were explored the day after the burial by several persons, who commenced their examinations at the point where young *Hillbary* lost sight of the accused. At this place it was supposed he (prisoner) left the road, and the track of a horse was traced by some persons through a laurel thicket, over the hill, coming out into the road where the *corpse* lay, about 50 yards above the place. They discovered also a place by the side of a log, where the *leaves had been pressed down*, forming a hollow in the leaves. On the log was a stone. At a little distance they discovered where a horse had been hitched; a little further a club, apparently cut in a hurry. The leaves of the bushes in the direction of the track were spotted, as some of the witnesses thought, with *blood.* On this subject there was some contrariety in the evidence. Some of the witnesses did not think they were the track of a horse, and one thought there were no tracks at all. There was a difference also among the witnesses about the appearance in the woods, some thinking that all of them were natural appearances, to be found at all times in the woods."

"On the 2nd inquest, it was proved that the knees of the horse were injured, and several witnesses swore, positively, that the injuries were not occasioned by the horse falling, but were cut with a knife, or some sharp instrument. He absconded immediately after the second inquest!" 2nd Inquest. Remark.

(75) "There was also a difference of opinion among the physicians examined. One of them giving it as his decided opinion that no judgment could be formed as to whether she was killed by *suffocation* or not, without an examination of the *lungs and brain*, neither of which had been seen by the examining physicians; the others thinking that the *swollen* and *turgescent* state of the *neck and face* sufficiently indicated a death by *suffocation*."

(76) During the trial a letter written by him, in prison, to Rachel Cunningham, was read by the prosecutor to the jury.

"So too, if a man hath a beast that is used to do mischief; and he knowing it, *suffers* it to go abroad, and kills a man; even this is *manslaughter* in the owner: but had he *purposely turned it loose,* though barely to frighten people, and make sport, it is as much *murder*, as if he had incited a bear or dog to worry them, or does any act of which the probable consequence may be, and eventually is death; such killing may be *murder*, although no stroke be struck by himself, and no killing may be primarily intended." (*Blackstone*, iv. 197.)

Case 19. Death caused by kicking. CASE 19.—KICKING, DEATH CAUSED BY. An inquest was held at Bolton, at the Horse and Groom, to view the body of the deceased (*John Fray*), and adjourned to the Pack Horse, to take evidence. (12*th September*, 1832.)

Evidence. Medical evidence. *Evidence* as to the *kicking* was given. *Mr. J. M. Robinson*, Surgeon, (*sworn*) who examined the body, stated "that he assisted in dissecting it. Description of body. Of skull. The *face, neck, chest, and back* were much swollen, and of a purple color, and a considerable quantity of blood had escaped frem the mouth and nostrils. On opening the *skull*, a quantity of coagulated blood was found extending a considerable way down the cavity, containing the spinal marrow, and on the back, the cuticle was detached to the extent of seven or eight inches by five or six, and presented the appearance as though the deceased had received some very heavy blows on that part. Had no doubt that death had been occasioned by a violent blow."

Jury deliberate. The *jury*, after a brief deliberation, returned a VERDICT of wilful murder against *Charles Lomax, James Aspinall, and William Crossby*, and they Verdict. Committal. were committed to Lancaster Castle, to take trial at the next Assizes.

Mary Campton was handed over to the Police, to be dealt with under the "*Vagrant* Act."

Resolution of Jury. After the jury had returned their verdict, they adopted the following resolution, which was signed by the foreman and the jury, and forwarded to Peter Ormerad, Esq. the Boroughreive.

"The *jury* beg respectfully to call the attention of the authorities of *Great Bolton*, to the dreadful scenes of *profligacy and wickedness* which are committed in the vicinity of the place where the said *John Fray* was murdered; and recommend that those houses which encourage such abominable scenes of wickedness, should be immediately indicted at the next quarter sessions, at the town's expense. (*Globe*, 17*th Septtmber*, 1832.)

Case 20. Killing with a hatchet. CASE 20.—KILLING WITH KOOL'HAREE (OR HATCHET). An inquest was held on the body of a native woman, named *Dooknee*, whose body was found lying in a hut in *Taltullah-bazar*.

Body viewed on the spot. "The jury proceeded to the *spot* to inspect the body, which presented a most shocking appearance. The head was nearly severed from the body, and only adhered to it by two pieces of skin, and several deep gashes presented themselves to view on different parts of the back, any of which would have been sufficient to cause death. The jury then returned to the residence of the coroner, (77) when the evidence was taken."

(77) They assemble, in the first instance, at his house, and go thence to where the body lies.

Dr. Vos (sworn). "The body of a woman pointed out by the coroner was examined by me yesterday. I found it lying on the ground in a quantity of blood, with the head nearly severed from the body by a severe and deep wound inflicted on the left side of the neck, and penetrating to the right. The *carotid artery, jugular vein, and cervical vertebra* were all divided, which must have been done by a heavy and sharp instrument, causing instantaneous death. There was another wound on the left shoulder, one on the shoulder-blade, and one on the back near the spine, a little below the left shoulder, from four to five inches long, two broad and deep to the bone. They may have been inflicted with the same instrument that caused the wound in the neck. The wound in the neck had the appearance of having been inflicted by more than one cut. (*A kool'haree, a sort of heavy narrow-bladed hatchet, was here shewn to the doctor*). All the wounds may have been inflicted with such an instrument." Medical evidence. Description of wound. Instrument produced.

The Police gave evidence that the prisoner *(Booloo)* came to them and said, he had committed murder, "*Take me into custody.*" Some spots of blood were found on his foot. He said he had murdered his wife, and took the Police to the house, where blood was found on the ground." 1st witness. Evidence of police.

"*Toroo*, the mother, said, she knew of no quarrel between the prisoner and his wife." "During the last four months my son has been occasionally a little deranged. He had no appearance of derangement when he sent me out for fire." (*Mother and son lived together.*) 2nd witness.

The *prisoner* (being cautioned not to criminate himself), *acknowledged his crime.* Prisoner.

The *jury* after a few minutes' consideration, returned a Jury.

VERDICT: "Guilty of wilful murder" against the prisoner. (*Before C. B. Greenlaw, Esq. Coroner. Calcutta John Bull, 8th May, 1832.*) Verdict.

CASE 21.—DEATH BY POISON, (*by suicide.*) An inquest was held on the body of *Mary Pool*, servant to Captain Gaull, No. 10, Moor-place, Lambeth. Before entering his service she had been confined in St. Bartholomew's Hospital with a *fever*, and subsequently was afflicted with a *disorder*, and she received notice to quit. She became dejected, and swallowed a quantity of *oxalic acid*, which she had purchased at a druggist's shop, New Cut, Lambeth. Case 21. Death by poisoning self.

VERDICT.—"Insanity." (*Morning Journal, 3rd February, 1830.*) Verdict.

CASE 22.—POISONED, SUSPECTED OF BEING. An inquest was held on the body of *Gowsy*, a Syce. (78) Case 22. Suspected of being poisoned.

(78) Previous to taking evidence, the coroner called in the relatives of the deceased to prove that the minutest inquiry would be made.

Medical evidence. *Dr. Vos* examined the body at the Native Hospital, externally first, then opened it.

Dissection. *Dissection.*—"Found in the cavity of the *thorax* every thing in a sound state, and also in the cavity of the *abdomen,* with the exception that by examining the internal parts of the stomach he found on the mucous membrane of the stomach several *red* spots, and also one or two patches, which were evidently signs of *inflammation.* The stomach was not contracted, nor was it distended with air; it contained about an ounce of fluid, which had the appearance of slime and water. The

Head opened. *head* was opened, but nothing particular was noticed, except that the blood-vessels were tinged with blood, in all probability owing to the violent *vomiting* which the deceased had before his death. That the conclusion he should draw from the examination was, that the deceased died of *inflammation* produced by something taken into the stomach, but could not say what. From the symptoms before death reported to him, he did not think it could have been any *vegetable* poison, but it might have been a *metallic* one; and in order, if possible, to ascertain the cause of death, he had taken the contents of the stomach and also a part of that which the deceased vomited in the Hospital, to his residence to analyse." (79)

Verdict. Verdict.—The jury consulted for a few minutes, and returned a verdict—"That the deceased came to his death by inflammation of the stomach caused by taking food when in a state of excitement, produced by extreme exertion." (*Before C. B. Greenlaw, Esq. Coroner, Calcutta, Monday, 30th May,* 1831.)(80)

(79) "Next day, he stated, that he had analysed the parts and found that the liquid stuff which had been *vomited,* consisted of *whitish fluid* and a few grains of *rice,* which was put to the minutest *tests,* particularly that of *arsenic,* because the symptoms before death, and the appearance of the body by dissection, approached the nearest to these found in persons who died from *arsenic;* the contents of the stomach were a very small quantity, and would not admit of many tests: however, some were tried, composed of *arsenic, copper,* and *lead,* but neither the contents of the stomach, nor that which the deceased had vomited, bore any appearance of any thing uncommon; in fact, it was nothing more than *water and slime,* and he is still of opinion that the decased died from *inflammation* in the *stomach,* which might easily have been produced by the deceased having eaten his food when his stomach was not in a fit state to receive it."

(80) He died on *Sunday.* In the case of Mrs. Dance, suspected to have been poisoned, the jury having viewed the body at the house wished to have the body opened, but it was not thought safe to do so. Mr. Edward Beck, Surgeon, examined the body, and was of opinion she had been dead 24 hours; at least there was a *black* mark round the *neck,* which he attributed rather to the progress of *decomposition* than to *violence,* as the body then presented all over nearly the same

Case 23.—Poisoned by laurel-water. The case of the poisoning of *Sir Theodosius Boughton*, in September, 1780, is well known. Captain John Donellan, married his sister, and destroyed the Baronet, who was scarcely 20 years old, to get his property. He effected this by *laurel-water.* (He first distilled rose-water and then laurel-water.) The Baronet was ill, and Captain D. continued to introduce laurel-water into the medicines sent. Lady B. said, the medicine on opening the bottle smelt like *bitter almonds!* The apothecary who supplied the draught, the taking of which was followed by the death of Sir T. deposed, before the inquest, that it was a mixture of *jalap, rhubarb, spirit of lavender, simple syrup, and nutmeg-water.* Case 23. Poisoned by laurel-water taken in medicine.

The suspicious circumstances in the case were, 1. "When he found he (*Sir T. B.*) had taken the laurel-water, his rinsing the bottles out with water into a bason, and sending it away. 2. The early soldering up of the coffin (third day after death). 3. The quickness with which the funeral took place; and disinclination to have the body opened. 4. His conduct when the body was disinterred to be examined. 5. His conduct at the inquest. At the trial Mr. Croft, one of the coroner's jury swore, that he saw the prisoner pull Lady B. by the sleeve when she first deposed, *that he had rinsed the phial.*" Suspicious facts.

Verdict. Of wilful murder against Captain D. who was committed for trial, which took place on 1st April, 1781, at Warwick; found guilty, and sentenced to death, and executed. (81) Coroner's inquest.

marks. He found Miss D, (the daughter) ill, who said, finding her mother dead, she got up, and drank something out of a bottle, which she thought was *lavender* or *laudanum*: and introduced the *stomach pump*, but could not trace any *laudanum*, nor any smell of *lavender*. A bottle which contained *laudanum* was found—but, it was proved that *Mrs. D.* was *not* in the habit of taking *laudanum*, though it was sent by the chemist to *Miss D.* (daughter) who took it occasionally.

Evidence was taken as to Miss D.'s state of mind, which proved her to be of weak intellect, but not of a cruel disposition.

Verdict.—"Died by the visitation of God." (*Before Mr. Carter, coroner for Surrey, at the Mason's Arms, Canterbury place, Lambeth. Times, 9th September,* 1830.)

(81) "Mr. Wilmer, a Surgeon, who at first declined opening the body, because its putridity rendered satisfaction from the operation hopeless, now deposed—that being present at the opening of the body when disinterred, he found all the contents of the abdomen or lower belly, more or less inflamed, and putrid; the upper part of the intestinal canal more inflamed than the lower part; the texture of the kidneys destroyed, and the internal substance bloody, and of a *red* color; the omentum, or caul, tender in its texture, and inflamed; the liver smaller than usual, and soft in its texture; the stomach much altered from its natural state, but not so much inflamed as the parts in its neighbourhood; that it contained some- Mr. Wilmer. Dissection appearance on.

Case 24. Action of arsenious acids.

CASE 24.—ACTION OF ARSENIOUS ACID UPON THE ANIMAL ECONOMY. 1.—"It appears that inflammation of the stomach and intestines ought not to be considered as the cause of death, in the greatest num-

what less than an ounce of brown-colored thick fluid, which, when taken out and examined in a bason, discovered no grittiness, or any metallic particles; that the midriff was particularly inflamed; the lungs putrid and inflamed, and in some parts *black*, and on each side of the lungs, in the cavity of the thorax and chest, was about a pint of extravasated blood in a fluid state. He had seen the mixture furnished by Mr. Powell, and that such draught or mixture, could not at any time occasion the death of the deceased." (*Dr. Rattray corroborated the above*, as did Mr. Snow, Surgeon, generally.)

Dr. Rattray. Mr. Snow.

Dr. Ashe.

TRIAL. They were examined in the trial. *Dr. Ashe* deposed that *laurel-water*, if distilled enough to collect the *essential oil*, a *tea-spoonful* of it would destroy animal life in a *few seconds*. That from the description of the appearance of the body on dissection, he believed Sir T. B. died of poison.

Dr. Parsons.

Dr. Parsons. From the description given was of opinion Sir T. B. died of poison. (*Laurel-water.*)

Defence. Mr. John Hunter's curious evidence.

Mr. John Hunter, Surgeon, (*sworn*) said, "*Opium* will poison a dog similar to a man, *arsenic* will have very nearly the same effect upon a dog as a man. Many things will kill animals almost instantaneously, that will have no detrimental or noxious effect upon a human subject: *spirits* (a little brandy), will kill a cat, if it gets into the *lungs*; but if into the *stomach*, three times the quantity will not kill. It gets into the lungs by *forcing* the animal to drink, its refusing and kicking cause the brandy to get into the lungs. From the symptoms that appeared after the medicine was given (to Sir T. B.) did not necessarily conclude that poison had been taken. That *apoplectic fits* were more frequent in old than in young persons; young persons more frequently die of *epilepsies* than old ones. Should have pursued his examination, on dissection through the *guts*, that is the track of the poison, and I should certainly have followed it up. As to the *froth* issuing from the mouth of Sir T. B. a minute or two before his death, that is common in young persons dying, from *apoplexy*, or *epilepsy*; in all sudden deaths, when the person is in what may be called health. I should rather suspect, it was *apoplexy*, and I wish, in this case, the *head* had been opened to remove all doubts. It would have still further removed doubts, because, although the *body* was *putrid*, so that you could not tell whether it was a *recent inflammation, yet an apoplexy arises from an extravasation of blood in the brain, which would have laid in a coagulum. I apprehend, although the body was putrid, that would have been much more visible than the effect any poison could have had upon the stomach or intestines.* The *appearances* (described) did *not* give the least suspicion of *poison*. As to sudden death the healthiest persons are liable to it, (the more vigor, the more so; for in disease the system is low from medicine, &c.) *As to the circumstance of the draught, I own they are suspicious.* The symptoms would give the general idea of *epilepsy* or *apoplexy*. As to the violent heaving in the stomach, all that is the effect of the voluntary action being lost, and nothing going on but the involuntary" (muscular motion.) "I have injected laurel-water directly into the blood of dogs, and they have not died. I have thrown laurel-water, with a precaution, into the stomach, and it never produced so quick an effect with me as described by those gentlemen," (the *quantity*

Guts.

Froth.

Head.

Sudden.

ber of cases of poisoning by arsenious acid. Nevertheless, if the animal does not sink under the first symptoms occasioned by the poison, if the inflammation has time to develope itself, there is not the least doubt that it is capable of destroying life. *M. Earle* relates, that a woman who had taken arsenic, resisted the alarming symptoms which first declared themselves, but died on the fourth day. On opening the body, the mucous membrane of the stomach and intestines was found ulcerated to a very great extent." (82)

2.—*Treatment.* "The first care of a physician called to the assistance of a patient poisoned by *arsenic*, is to favor the expulsion of the poison by *vomiting*. The means to be used are nearly the same as those in the case of *corrosive sublimate;* and which consists in administering great quantities of warm water, milk, water sweetened with sugar or honey, decoctions of linseed, marsh-mallows, &c. &c. The tickling the throat with a feather, or with the finger, ought not to be neglected; it often enough happens that this treatment alone is sufficient to calm the symptoms." (83) Tr tment.

or *strength* is not mentioned.) "There is no disease whatever that becomes constitutional, but what can be given to a child. There is no disease which is *acquired*, that can be given to a child; but whatever is constitutional in the father, the father has the power of giving that to children; by which means it becomes what is called *hereditary;* there is no such thing as an *hereditary disease*, but there is an *hereditary disposition* for a disease," (there appears no proofs that the father died of any such disease. It may be a question whether constitutional predisposition to disease, from the father, say *gout*, may not be overcome by care in bringing up the child.) "Most diseases are constitutional; the *small-pox* is, though it requires an immediate cause to produce the effects. (Has been caused by a child falling into a river, from *fright.*) The *venereal disease* is hereditary. I conceive *apoplexy* as much constitutional as any disease whatever. *Apoplexy* is not so likely to attack a *thin young man*, who had been in a course of taking *cooling medicines before.*" (The Baronet was afflicted with the *venereal disease*, and if he was taking a cooling medicine it would be to work off the effects of mercury—therefore, in a low state of body. If in such a state one glass of wine would get into the head, and affect a person sooner than if stronger—*Query*—would not less *laurel-water* affect such a person?) "I do not mean to equivocate, but I can give nothing decisive." (*See Celebrated Trials*, vol. v. p. 82. *Dr. J. G. Smith*, 180, 182, 250; *Paris and Fonblanque*, ii. p. 130, 161, 402, 467; App. 243: *Beck*, 541, 607.)

Constitutional diseases father to son.

Small-pox.

(82) Orfilla on Poisons, vol. i. p. 116.

(83) Orfilla, vol. i. p. 148. "*M. Marcelin Duval* was called unto a man who had taken some arsenical powder; he found him in a violent state of agitation, complaining of tearing pains of the stomach, a burning thirst, and constriction of the throat. He caused him to drink, at different times, two pints of logand-water. Frequent vomitings came on, and all the symptoms became calm. The same kind of drink was continued during the night, and two glysters of the same nature were Glysters.

Examination of contents of stomach.

3.—Examination of contents of stomach or motions.(84)

prescribed for him: the next day he was in a state to go about his ordinary employment. In another instance, *M. D.* introduced into the stomach of a dog, 24 grains of arsenious acid, dissolved in six ounces of water: half an hour after, the animal was tormented by vomitings of a frothy matter, and excessive agitation. Water sweetened with honey was injected from one quarter of an hour to another, until all the symptoms disappeared, which happened immediately after the 8th and last injection. On the 3rd day he was perfectly well."

Froth.

"I have often repeated this experiment, substituting warm water for the water sweetened with honey, or sometimes both, or some mucilaginous decoction; and I have always obtained the same results." p. 149.

"The celebrated author of the *Nosographie Philosophique*, reports the case of a woman who had taken *arsenic* with the intent of killing herself."

Fomentations.

"Having received succour in time, by the copious use of milk, mucilaginous drinks, veal-broth, chicken-broth, and fomentations, she escaped death; but her existence is still the most distressing, and the most painful. The symptoms she experiences are, anxieties, an irregular febrile state, dryness of the skin, an aridity of the tongue and throat, a very ardent thirst, painful respiration, deep-seated pain in the region of the stomach, tension of the abdomen, obstinate constipation, spasmodic constriction of the extremities, with wandering pains in the pudenda. I have insisted much on the use of drinks sweetened with sugar or honey, or even sugar in substance, and this treatment has been followed with very evident relief; *but is it in the power of medicine to repair the disorders produced in the texture and structure of any of the viscera by a poisonous substance?*"

Stomach filled less liable to effects of poison.

"We could quote a fact generally known, which is, that the symptoms arising from the use of *arsenious acid,* and, in general, from all the corrosives, are so much the less severe, as the *stomach* happens to be *filled* with a great quantity of *solid* or *liquid* matter; the poison, in that case, *being disseminated over a greater extent of surface,* and especially the vomiting being more easy. The following facts will put this truth beyond all doubt:—

"A number of persons being at a feast, there was served up at the desert, a dish, into which arsenic had been put instead of flour. Such of the guests as had, till then, eaten but little, died of it instantly; while those, on the contrary, who had the stomach full, were saved by vomiting."

"Three children, one of which was a male of two years of age, who had been sick, and two adult girls, ate of a pottage in which there was arsenic. The boy, who took only two spoonsful, had no vomiting, and died; the girls, who ate all the rest, vomited, and were saved." (*Orfilla*, vol. i. pp. 149, 150;) (it is said that there will be a rising in a pudding, if arsenic is mixed with the flour—but, if not equally mixed, some might eat of the unmixed portion, and, of course, be saved.)

"Fat substances, such as oil, butter, cream, grease, &c. are even dangerous. All the animals to which he (*Renault*) gave arsenious acid in butter or grease, died sooner than if they had swallowed the poison alone, or mixed with any other substance." (p. 151.)

Leeches. Bleedings.

"Leeches, bleedings, baths, tepid, demi-baths, fomentations, emollients, glysters, antispasmodics, and narcotics, are all so many means which ought to be had recourse to, in cases where inflammation of the abdomen has already taken place, and where the patient is a prey to alarming nervous symptoms."

4.—Examination after death, by dissection. (85)

Case 25.—By shooting himself, (*suicide.*)An inquest was held in the South Barracks, Fort William, on Mr. Dunbar, late Captain in the Case 25. By shooting himself.

"It must never be forgotten, that the success of the treatment depends in a great measure on the sort of regimen the patient observes during his convalescence, which is commonly long and painful. He ought to be principally nourished by milk, gruel, and rice-creams, and he should be made to take nourishing drinks." (pp. 152, 153.)

(84) "We recommend to the Juridical Chemist, who suspects the presence of arsenious acid in broth, coffee, or any coloured liquor, to add a solution of *ammoniuret of silver*, and thus to precipitate indiscriminately all the bodies which it may be capable of so affecting. The precipitate may then be collected, and submitted to heat in a glass tube." Examination of contents of stomach, or motions.

"If the *arsenious acid* be so mixed with various foreign matter as to render its separation by filtration difficult; in such a case, after having boiled it in distilled water, in order to procure all the soluble matter from it, the residual mass may be evaporated to dryness, care being taken that the heat applied never exceeds 250° *Fahr.*, or we shall lose the arsenic, should any be present by volatization. The residue thus obtained may then be admitted to a higher temperature in a sublimating vessel, in order to procure the arsenious acid in its pure state. This process applies particularly to the examination of the matter vomited, or the feculent evacuations passed, by the patient. Should the arsenious acid have, in the first instance, been dissolved in *oil*, *Dr. Ure* proposes to boil the solution in distilled water, and to separate the oil afterwards by the capillary action of wick threads. If the arsenious acid be mixed with *resinous* bodies, *oil of turpentine* may be employed as their solvent, which will leave the arsenic untouched." (*Paris and Fonbl.* vol. ii. p. 253.)

(85) "If the physician be called upon to investigate the contents of the alimentary canal after death, and the arsenious acid cannot be discovered amongst the suspected matter, the stomach itself must be cut into small pieces, and in compliance with the directions of *Orfilla*, boiled in 10 or 12 times their weight of distilled water, which should be renewed as fast as a portion of it flies off in vapour: this liquid should be cooled and decanted, in order to put a few drops of it into the solutions of the different re-agents." Examination and dissection after death.

"If the precipitate should indicate the presence of arsenic, we may proceed according to the directions given; if the fluid offers no indication of poison, the mass exhausted by water should be treated, by boiling it for some time in a solution of *potass*, by which means the stomach will be partly decomposed and dissolved, and the arsenious acid, with which it might have been combined, saturated by the alkali. In this state the liquor is to be filtered, again boiled, and nitric acid added, little by little, until it passes from a dark to a clear yellow color. The object of the acid in this stage of the process being to decompose and destroy the animal matter. The excess of acid should be saturated with potass, when an *arsenite of potass* will be formed, if there really existed any arsenious acid in the stomach. This *M. Orfilla* recommends us to precipitate by the *hydro-sulphuret of ammonia*, and a few drops of nitric acid; (*Rose* prefers *lime-water*;) a yellow *sulphuret of arsenic* will be the result, from which the whole of the metal may be obtained, by

Suicide. 26th N. I. After being sworn the jury proceeded to the room where the body was; the ground was covered with blood, and a pistol lay close to the body; another pistol, and a double-barrelled fowling-piece lay

drying it upon a filter, mixing it with an equal bulk of potass, and melting it in a small glass tube."

"This complicated mode will rarely be found necessary, but should not be neglected where the presence of arsenic cannot be otherwise detected in the alimentary canal of those suspected to have died from its ingestion, especially in the examination of a body, where, from the length of time it may have been under ground, there is reason to suppose that the acid exists in a state of intimate combination with the animal matter. *Advanced putrefaction, however, will not, in the case of arsenic, defeat their success; let the forensic physician, then, remember that the length of time which may have elapsed since the death of the body, ought never to be urged as a plea for not having proceeded in its dissection."* (*See Orfilla*, vol. i. p. 137, *et seq.*) Paris and Fonbl. ii. pp. 254, 255.

Putrefaction will not defeat examination.

Opium.—Symptoms of poisoning by.

Opium.—*Symptoms of Poisoning by.* 1.—"In considerable doses, the primary action of this substance, as a powerful and diffusible stimulant, is not apparent; for the powers of life are immediately depressed, drowsiness and stupor succeed, and these are followed by delirium, stertorous breathing, cold sweats, convulsions, and apoplectic death."

"Where a person has from accident or design swallowed a large dose of pure opium, or laudanum, the symptoms produced are so characteristic and striking, that the practitioner will have no difficulty in ascertaining the cause."

"Insensibility, with a scarcely perceptible respiration, although in some cases it is attended with an apoplectic stertor; the countenance is livid and cadaverous; the skin cold; and the muscles, the limbs, and trunk in a state of extreme relaxation. The pupils are insensible to the impression of light, and the pulse is almost imperceptible. In some stages, the patient, by being strongly shaken, may be roused for a few minutes from the *lethargy;* there is generally a *narcotic odour* distinguishable in the *breath.* Vomiting may also take place upon the first impression of the *laudanum* upon the stomach; although after its action has been displayed upon the brain, it will be difficult to excite *emesis* by the most powerful means. *M. Majendie* proves that, without the influence of the *brain*, the muscles whose actions constitute an essential part of the operation, are incapable of performing their duty, and that vomiting therefore cannot take place, and death ensues from *suffocation.* This is a very important doctrine, as it suggests several expedients, by which vomiting may be occasioned, by recalling the excitability of the brain. The period which will elapse, between the ingestion of the poison, and the death of the sufferer, may be stated to be from 6 to 24 hours; but it will in each case be liable to vary, not only from the *quantity* of opium swallowed, but from the *habit* and peculiar circumstances of the individual submitted to its operation."

Treatment. 2. *Treatment.*—"The first object is to evacuate the stomach by vomiting; by being made to swallow from 15 to 20 grs. (scruple) of *sulphate* of *zinc;* or, from 5 to 10 grs. of *sulphate of copper* dissolved in water; and the vomiting should be kept up for a considerable time, and urged by irritation of the fauces. Where the act of vomiting cannot be effected, in consequence of the paralysed state of the ner-

on the table. After viewing the body, the jury adjourned to another room. *Dr. G. Playfair*, Garrison Surgeon, (*sworn*). "I found several persons in the room; the deceased was lying on his left side, and a pistol lay near him, which had recently been discharged. He had a wound in the left temple, and his left hand and shirt-sleeve were blackened with smoke. I did not then minutely examine the body. A packet of papers was hanging out of the deceased's pocket." (*Retired at request of coroner to examine the wound in the head.*) View of body. Medical evidence. 1st witness.

Mr. Dod sworn. "The deceased was lately dismissed the service by the sentence of a court martial, (86) and recently arrived with me from the Upper Provinces; he has been since in low spirits, and was much depressed. I heard him say at one time (when he was not quite 2nd witness.

vous system, cold effusion, applied by a shower bath, has been said to restore the energy of the brain, and thus render the patient susceptible of the stimulus of an emetic. *Venesection* has also, in like cases, been greatly extolled; and, as vascular congestion in the brain is one of the effects of this poison, it is reasonable to conclude that, by unloading the vessels of this organ, we may restore its lost sensibility. Where the operation is performed, the blood should be drawn from the *jugular vein*, in preference to any other. Should these means prove insufficient to provoke vomiting, *M. Orfilla* asks, whether one or two grains of *tartarized antimony*, dissolved in one or two ounces of water, might not be injected into the veins.

"The emptying the stomach by the introduction of a *syringe!* has been lately performed with success." (1822.) "*Vinegar* and *vegetable acids*, so long as any portion of the opium remains in the stomach, so far from relieving, aggravate the symptoms, by the power which they possess of dissolving." *(Orfilla)*. Where, however, the opium has been expelled by vomiting, these acid-drinks possess the property of *diminishing the consecutive symptoms*. The powers of the habit should, at the same time, be supported by *brandy, coffee*, and cordials. The sufferer should be kept awake; and, if possible, in a continued gentle motion." (*Paris and Fonblanque*, vol. ii. pp. 388, 393.) Syringe.

3.—*Appearance on dissection.* "*M. Orfilla* asserts, that no alteration can be discovered on dissection, in the digestive canal, of persons who have swallowed *any narcotic* poison; and that if facts contrary to this assertion be met with in various authors, it is because there have been administered *irritating substances* capable of producing *inflammation*. The *lungs*, however, frequently exhibit *morbid phenomena*; their color is sometimes *violet*, and frequently a deeper *red* than in the natural state. Their texture is also more *dense*, and less crepitating; and they are marked by *livid spots*. The *blood* contained in the ventricles of the *heart*, and in the *veins*, is said to be found in a liquid state; but *Orfilla* asserts, that it is frequently coagulated. The *brain* and its membranes often exhibit a state of vascular congestion; in the case recorded by *Mr. Stanley*, the cellular tissue of the *pia mater* was found to contain water: the *stomach* was *red*, but the color was traced to the tincture of *cardamums*, which the deceased had taken." (*Paris and Fonblanque*, vol. ii. p. 393.) Appearance on dissection.

(86) General Order, Commander-in-Chief, 31st December, 1829. He was tried twice before, in 1822 and 1828.

sober), that he was determined not to leave this country. (87) He complained last night of being unwell, and seemed exceedingly nervous. He was then perfectly sober. *(Pistol and fowling-piece produced, and identified as having been the property of the deceased.)* With the exception of what I have stated, he gave me no cause to believe he meant to kill himself."

Pistol, &c. produced.

Dr. P. re-examined.

Dr. P. re-examined. "I have examined the body, and it appears that the pistol was loaded with small shot. The wound is on the *left temple*, and the shot lodged in the *brain*, but there is no wound on the opposite side. Where the shot entered, the skull is much shattered. The wound was the cause of his death."

3rd witness.

Mr. Moring Bignell, a cadet, sworn. "Was awoke by a loud noise early this morning—it came from the room of the deceased. He was crying out, "that he would not be confined; and that no man should confine him without legal authority." At day break the noise increased; I went outside of my room (opposite to his), and in half an hour after my return (about half past six), I heard the report of fire-arms. Lieut. Williamson came into my room and told me, that the man who had been making such a noise during the night had fired through the venetians of his door, and wounded one of the servants. I told Lieut. W. to report to the Town Major. I went into the apartment, forced open the door, and saw the body lying on the ground, as at present: the pistol was lying close to his *left hand*."

4th witness.

Ninaum, Sirdar-bearer to Mr. B., sworn. "Mr. D. opened the venetian blinds of his door, and fired at me."

5th witness.

Bowanee, Sirdar-bearer to the deceased, sworn. "Mr. D. and my master were together last night until 9 o'clock, when Mr. D. then went into town. My master walked up and down the passage until 3 o'clock in the morning, and then lay down on the floor in the passage. I lifted him up in my arms, and placed him in his bed. He was tipsy, and had been drinking wine. I opened one bottle of claret at 9 o'clock last night, and another at 3 o'clock this morning; he drank all the first bottle, and part of the second. He had been in the habit of drinking in a tavern in Calcutta for three or four days before."

Coroner.

Coroner. The coroner charged the jury, who immediately returned the following verdict:

Verdict.

VERDICT.—" That the deceased, *James William Dunbar*, shot himself whilst labouring under insanity." (*Before C. B. Greenlaw, Esq. Coroner*, 15*th July*, 1830.) (88)

(87) Ordered to be sent to England by the same order; as is always the case.

Other case. Case 1.

(88) In the case of a man who shot himself, he being in the habit of carrying a *pistol* about him, a juror requested it might be produced to see if it were the same,

Case 26.—Death by a wall falling. "During a gale, the wall of a building belonging to *Buddenath Seal*, occupied by *Mr. H. J. Lee*, fell down. The coroner and jury went to the premises; two natives had been killed. *Mr. L.* said he had frequently told the landlord that it was in a dangerous state, and that it was likely to fall, and probably occasion the death of some one; but of this the landlord took no notice. Case 26. Death by a wall falling.

Verdict.—" *Accidental death*, and decreed a *deodand* of 100 rupees, to be paid by the landlord." (*Before C. B. Greenlaw, Esq. Coroner, Calcutta*, 27*th May*, 1830.) Verdict.

Case 27.—Death from want of medical aid.* An inquest was held on the body of a native woman (*Luchmun Raur*)—the wounds had been inflicted by *Gunganarain*. The woman went to the Native Hospital, but left it. She was warned (her wounds being dangerous) of the consequence of not attending at the Hospital; she paid no attention to the advice, and her wounds having become ulcerated, she died on the 5th. Case 27. Death from want of medical treatment.

Dr. Vos was of opinion, her death was caused by extensive ulceration, and that proper surgical attention had not been paid to the wounds. Medical evidence.

(*produced.*) (*Verdict*, suicide.) (*Before J. W. Unwin, Esq. London*, 1829,) and so was the musket produced with which *Michael Shehan*, *private*, 16th Foot, shot himself. (*Before C. B. Greenlaw, Esq. Fort William*, 5*th August*, 1830.) Case 2.

When, in the case of a parricide and suicide, *Abel Griffiths* having killed his father (*Thomas Howard G.*) and afterwards himself—the *verdict* was wilful murder of *T. H. G.* by the said *A. G.* who afterwards killed himself in a sound state of mind. The *warrant* for the interment of A. G. was delivered to the summoning officer, to see it duly executed. *Opposition being expected on the part of his friends, a party of constables* was placed over the house." (*Annual Register*, vol. lxv. pp. 65, 77, 82. *Chronicle*, 23*rd June*, 1823.) Case 3. Warrant for interment, opposition expected.

"In the case of Modoo Singh, the *verdict* was, Died from the effects of a wound in the belly, inflicted by himself; but as to the state of his mind when he committed the act there was no evidence." (*Before C. B. Greenlaw, Esq. Calcutta*, 9*th November*, 1830.) Case 4.

There was in 1830, the case of a sepoy, who gave evidence in the case of the death of another sepoy, and thinking his evidence had been called in question, the man (*Hindoo*), from a sense of *honor*, put an end to himself. He loaded two muskets, one singly, the other doubly, and committed *suicide*. (*Before C. B. Greenlaw, Esq. Calcutta.*) Case 5.

In the case of Lieut. Col. Brereton, who committed *suicide* in consequence of the affair of the riots at Bristol, the *verdict* returned was, "that the deceased died of a pistol wound, inflicted by himself under *temporary derangement*." (*Before W. Joyner Ellis, Esq. one of Coroners for the County of Gloucester*, 14*th January*, 1832.) Case 6.

Verdict. VERDICT. "Wilful murder against ***Gunganarain***." (*Before C. B. Greenlaw, Esq. Calcutta, 4th December*, 1832.)

Case 28. Dying in jail. CASE 28.—DYING IN JAIL. An inquest was held on the body of *George Pearson*, who was in confinement under sentence of imprisonment, with hard labour for two years, commencing in April, 1831.

Verdict. VERDICT.—"The jury, after hearing the evidence of the keeper of the house of correction, the Surgeon, and the only other European prisoner—returned a *verdict*, Died of fever." (*Before C. B. Greenlaw, Esq. 6th December*, 1832.)

Case 29. Death of person unknown. CASE 29.—DEATH OF PEOPLE UNKNOWN. "If a stranger, unknown to the country, be found slain, or if the dead body of a person (who when living was well known) be so disfigured by its wounds that it cannot be known who it was, and the slayer be taken, or is at large, he may be indicted for the murder of a person unknown." (*Grindon*, 200.)

Verdict. VERDICT.—That A. B. (*to the jury unknown, or so disfigured as not to be known*) died from wounds (*described*) inflicted by a ———, by a person, or persons, unknown, and (*if so*) who has since fled. "*Verdict* of murder against a person or persons unknown." (89)

(89) Inquiry should be made how long the person had been at the station, and where he came from. A description of his person (if possible), his apparent age, occupation, &c. similar, if possible, to that given in the case of persons getting *pensions* when native soldiers are *killed, &c. in action*, should be sent to the magistrates near, and to the place where the deceased came from.

CHAP. III.

COURTS OF INQUIRY.

SECTION 1.—TO INSPECT WOUNDED OFFICERS.

1.—The Medical Board in England, &c. examine wounded officers, (*Article of War*, 88,) and the Board consists entirely of medical officers, (5) and in no case of less than three medical officers. If in India, or abroad, an officer were wounded on service, a special committee of Surgeons may be assembled at the time or afterwards—it would be composed of Surgeons upon the same principle. The medical officers of the regiment to which they belonged would give their opinion, and be examined as witnesses; particularly the Surgeon who attended him during his illness, whose certificate would accompany any proceedings held on his case, and be submitted to the Board at home, who are guided by their view of the case, and inspection of the wounds. Section 1. To inspect wounded officers.

2.—If an officer has lost a limb or eye, such being a positive loss, is conclusive, and a further examination would not be required: but in case of bodily wounds, the officer is liable at any time, to be summoned before the Board at home. (1) Liable to more than one examination by the Board.

SECTION 2.—COURT OF INQUIRY UPON DESERTERS.

Section . Court inquiries upon deserters.

Article of War, 82. Every soldier, on conviction of the crime of desertion, forfeits thereupon all advantages as to additional pay, and to pension on discharge: and if any soldier shall have been illegally (2) absent from his duty for the space of two months, a regimental court of inquiry of three officers (3) shall assemble; and, having received proof of the fact, declare such absence, and the period thereof, and the officer commanding the corps shall record such absence, and the declaration of such court of inquiry thereon, in the regimental books;—if such soldier

(1) Officers going on half-pay, in consequence of wounds, have an exception made in their favor, though they may not have served three at home, or two years abroad, under Reg. xii. Warrant of Secretary at War, 22nd July, 1830; but all cases of pensions, &c. to wounded officers are governed by the recommendation of the Secretary at War: as are *widows' pensions* under the warrant dated 13th June, 1826, subject to that of *7th July*, 1830, those *then* married, or who may have married before the 1st January, 1831.

(2) i. e. Without regular leave, &c.

(3) A Captain and two subalterns.

shall have been apprehended or surrendered before such record shall have been entered, (4) or shall subsequently be apprehended, or surrender, he shall be tried by a court martial empowered to try desertion; (5) if convicted, the sentence of any such court shall be inserted in the soldier's discharge: *provided*, that in case he should have subsequently served and performed good, faithful, or gallant services in our army, he may, on the same being duly certified by our Commander-in-Chief, (6) be eligible to be restored to the benefit of the whole or of any part of his service; (7) and should the recommendation be approved of by us, our order for the restoration will be signified through the Secretary at War." (*See Article* 39.) (See cl. M. A. 11.) No oath is administered.

N. B. See Article of War, 88, Formation of the Board and declarations of members.

Section 3. Court of Inquiry previous to discharge.

SECTION 3.—COURT OF INQUIRY ON THE CONDUCT OF SOLDIERS PREVIOUS TO DISCHARGE.

Article of War, 83. 1.—"The names of soldiers of any regiment or corps who have received our special approbation for meritorious conduct, or who have received a donation of money in addition to their pension on discharge, shall be notified to the parishes to which they may belong, by our Secretary at War;—and on the other hand, the names of soldiers who have been dismissed with *disgrace*, or who have forfeited their pension owing to *misconduct*, shall be equally notified to the parishes to which they belong; such notification being affixed on the outside of the door of the Church or Chapel on the Sunday next succeeding the receipt of the notification." (8) See 46, cl. M. A. as to marching money.

Character notified to parishes.

(4) This record is made at the expiration of two months' absence, and the time is calendar time, i. e. from 1st August to 1st of October, ending 12 o'clock at night of 30th September.

(5) *By Article* 81, "No regimental court-martial shall try any deserter under the term of absence without leave, if the absence has exceeded 21 days; but such offender shall be tried by a general, or district, or garrison court-martial, and in cases of an aggravated nature, the prisoner shall be tried for desertion, without reference to the number of days of such absence."

(6) By the commanding officer of the regiments.

(7) The sentence of forfeiture may be mitigated by the Commander-in-Chief, as in the case of private Richard Cooke, His Majesty's 38th Foot, (*G. O. K. T. 21st February*, 1827;) or, if a district court-martial, the general officer of the division may, by his warrant, mitigate the sentence. The provision of Article 82 should be extended to the H. C.'s army.

(8) This should be applied to the H. C.'s army. By Article 46, any false statement to obtain any pension is punishable. The warrant, dated 14th Novem-

2.—The court, under Article 87, consists of the Major, or 2nd in command, as President, and two Captains as members. The Surgeon of the regiment is examined, when men are to be invalided. The discharge contains the crimes and sentences against the discharged soldier.

Composition of court.

SECTION 4.—COURT OF INQUIRY TO OBTAIN INFORMATION GENERALLY.

Section 4. Court of Inquiry to obtain information generally

1.—The right to hold courts of inquiry is very ancient, (9) and is delegated by the King to the Commander-in-Chief, &c. and the custom of the army has given it to all commanding officers: as they have the right to try, by the Articles of War, by court martial, the inferior court merges in the superior, and in point of fact the court of inquiry is to gain information, and not to give an opinion, unless expressly ordered.

2.—*Captain Simmons*, p. 64, mentions a garrison court martial held at Loughrea, in Ireland, by order of the Commander of the Forces, in 1807, for the purpose of investigating the circumstances connected with an affray which had occurred between the mainguard and some of the inhabitants. No person was charged before the court, but the evidence received was entirely on *oath*, and an opinion as to the *cause*, *origin*, and *circumstances* connected with the affray was required."

Sometimes by means of a court-martial an opinion given.

3.—There are many cases in which a court of inquiry is necessary to elicit information. (10)

Courts of inquiry often useful.

ber, 1829, prescribes the regulations for the discharge of soldiers, after certain periods, as *wounded*, *disabled*, or *invalided*.

1.—The record of soldiers' services is laid down in a warrant, dated 14th November, 1829.

2.—The course of the proceedings is laid down in the warrant, dated 30th July, 1830.

(9) Simmons, p. 72, 13 Car. 2. (1661) c. 6.

(10) In 1812, (26th May,) a special court of inquiry was held at Allahabad, to inquire into abuses which existed among the native invalid establishment, consisting of a field officer, four Captains, and a D. J. A. G.

Abuses.

2.—In 1814, (12th December,) a special court of inquiry was held at Cawnpore, for the purpose of inquiring into the circumstances under which a bullock or cow had been killed and thrown into a well in the lines of the Golundaz corps by a *Moosulman*, by which great dissatisfaction was given to the *Hindoos* generally. The court consisted of a Captain and two subalterns as Members. The *witnesses* were *sworn*. Certain parts of the Adjutant General's letter were read to the native officers examined.

Quarrels.

Witnesses sworn.

3.—In 1815, a special court of inquiry was held at Meerut, to inquire into the circumstances connected with the conduct of a particular regiment in the operations before the Fort of Kalunga, in 1814. The Quarter-master General, H. M. Forces in India, was President, and other staff officers were Members, with a D. J.

Conduct of a regiment, &c.

Expedition.

4.—The case of the court of inquiry held to inquire into the failure of the expedition to the coast of France (1757), (11) is well known; it consisted of a Lieut.-General, two Major-Generals, one Colonel, and one Lieutenant-Colonel as Members, and the D. J. A. G. of His Majesty's Forces. (12)

Papers submitted, read, and recorded.

5.—The papers submitted, as well as the letter of instructions for the guidance of the court, should be read and entered on the proceedings. It is obvious, that if the papers are not recorded (or placed in an Appendix), the authority to pass a judgment has not the real merits of the case before it. (13)

6.—In *Section* 6, will be found the mode of proceeding at a court of inquiry.

Court of Inquiry to clear character not of right.

SECTION 5.—COURT OF INQUIRY SOLICITED TO CLEAR CONDUCT, OR CHARACTER.

A court of inquiry in such cases is granted as a *favor*, not as a *right*. But, if there exist really just grounds to grant an investigation into an officer's conduct, he should apply for a court of inquiry through the regular channel of his commanding officer. There may exist some conduct of his, in relation to some affair in his regiment, and if the case cannot be regimentally settled (as is the best course), then he should apply for a court through his commanding officer. Such courts should, I think, from motives of delicacy, be closed; and though the members take no oath of secrecy, a proper sense of propriety and fellow-feeling will point out the expediency of not making *public* what ought to be *private*, and known only to those concerned. (14)

A. G. The court was closed, and its proceedings have never transpired. An opinion was given. The court of inquiry regarding the *Cintra convention* was ordered to be an open court.

Supplies for an expedition.

4.—In 1826, (18th March,) a special court of inquiry was held in Calcutta, to inquire into the arrangements which had been made by a particular department in the Burmese War. *President*, a Member of the Medical Board, *Members*, 1st a Military Auditor General, and Secretary, and accountant, commissariat department, and a D. J. A. G. As well as upon various other occasions.

(11) McArthur, vol. i. p. 113. on the general and other officers. Sir J. Mordaunt was present, and asked his reasons for his conduct, which was improper.

(12) The constitution of the court depends upon circumstances: usually consists of three officers—but should be composed of officers best acquainted with the subject to be investigated—and there should be an *interpreter*, when required.

(13) If very voluminous, an Appendix may be the best mode; otherwise, referring back often to the process is inconvenient.

(14) The officer should be present, and the parties concerned also. *Delafons*, p. 57, mentions courts of inquiry upon such occasions.

sion in such cases may be proper, and should be in general terms— that the court "are of opinion that there is or is not reason to impute any impropriety of conduct to A——." Opinion when given.

Such an opinion together with that expressed by the officers commanding the station and division ought to be satisfactory, if in favor of the accused.

SECTION 6.—COURT OF INQUIRY TO SEE IF THERE BE GROUNDS FOR TRIAL.

1.—The subject before the court is properly framed into a charge; such contains in a concise form the substance of the accusation: and no officer should, I conceive, have his conduct submitted to the investigation of his brother-officers unless there are specific grounds laid by the accuser in some shape, with a list of witnesses or evidence to substantiate the accusation. (15) Court of Inquiry to see if grounds for trial.

2.—The order for the assembly of the court should be read and recorded, as well as the station, day of the month, &c. There is not any fixed hours for sitting, and as neither the M. A. nor Articles of War mention such courts, it is only by custom that they conform to the same hours as courts martial: there are cases in which it may be necessary to sit before, or after, the usual hours: (16) and though *Sunday* is not a day for sitting, still there may arise cases requiring a court to sit on Sunday. (17) Order for assembly, &c. read. Time of meeting.

3.—The court consists of either five or three officers, and whether they are to be *European* or *Native* officers must depend upon circumstances. (18) If an European officer is concerned, the court should consist always of European officers. Five or three officers.

(15) The form of a letter, accusing another of any crime, or misconduct, is objectionable, if the only document before the court, and is liable to run into extraneous matter. A letter should accompany the charge. If the accused does not send in any charge, he should be desired to do so, or submit a statement of the facts, in a concise form, detailing certain transactions of which he complains, and avoiding all intemperate language.

(16) Cases of mutiny, &c.

(17) This has been done with respect to *inquests*. See *chapter* ii. note 71.

(18) If the accused be a *native* officer or soldier, it should be composed of native officers, superintended by an European officer, a Captain if practicable; or subaltern of not less than six years' standing. (*See G. O. C. C.* 25*th June*, 1832.) And of *European* officers—though *natives* are concerned, in the cases in *note* 10, 1, 2. It is obvious that though in some cases where natives are concerned, native officers will best elucidate the facts of the case: still, the same result can be obtained by examining them as witnesses, and by asking them to propose any course of investigation; or to be present to put any questions, and the necessary questions being put, the officer ordering the court can judge of the case. Certainly in no case affecting discipline would I have native officers to compose the court.

4.—Whenever there is *native evidence*, there should be an interpreter. (19)

Accused present except, &c.

5.—The *accused* should be present in all cases not falling under *Section* 7 : in which cases the court will exercise their judgment as to *his* being present or not. He must attend, if ordered, as upon any other duty. (*G. O. H. G. 3rd July*, 1809.) The accuser should be present.

Prosecutor must be a military person.

6.—In certain cases, a D. J. A. G. is appointed to conduct the proceedings, (*see note* 10,) but as he has the supervision of all courts of inquiry held in his division, he should not be employed on this duty in ordinary cases. (20)

Examination of witnesses.

7.—The evidence should be taken down in writing in the first person singular—" I, &c." Each party should examine their witnesses in the same order as at a court-martial; those for the prosecution first, and then those for the defence. The prosecutor may make a short statement to explain the nature of the inquiry, if necessary, but that should not be as to motives which will be seen in the course of the inquiry. He may do so at the beginning of each new subject, or charge, and so may the defendant open his case on each charge, &c.

Witnesses not sworn. Cautioned to speak the truth.

8.—The *witnesses* are not sworn, but G. O. C. C. 8th February, 1802, should be explained to each, cautioning them of the penalty in case their evidence on the trial should vary from that they now give. Although the military writers confirm this opinion, there are cases in which they have been ordered to be sworn, but then they were only examined for the prosecution. (21) It is clear that were the witnesses sworn for the defence it would amount to a trial, and is never the case before a grand jury; though the defendant can refuse to examine any witnesses.

(19) A member may interpret in courts where witnesses are sworn. (*State Trials*, vol. xiv. p. 580;) he being sworn, and by purity of reason before courts of inquiry, where his aid may be required.

(20) Letter J. A. G. 8th February, 1819. Letter A. G. No. 1757, 12th June, 1828. The J. A. G. to His Majesty's forces conducted the court of inquiry in the case of private Somerville of the Scot's Greys, in June, 1832. (*Weedon Barracks.*)

(21) As in case 2, note 10, (*Lr. A. G. 6th December*, 1814,) and in the case of a court of inquiry held at Bhagulpore, in April, 1816, relating to an accusation of bribes having been taken by a detachment on its march from Berhampore to that place, arising out of depositions made before the magistrate of that place, against several individuals : here it became necessary to swear the witnesses to the same evidence. (*A. G.'s Lr. 28th March*, 1816.) The court gave an opinion that there were grounds for the trial of the officer commanding the detachment : his trial was ordered ; but he solicited to be pensioned, which was granted.

The court may examine any witnesses they like, but where there is a specific charge against any individual, they should adhere to it strictly, and not go into other matter, and if the inquiry be on charges against the accused before the court, he would be entitled to object. Evidence to the charge, &c.

9.—The accused, when the evidence for the prosecution is closed, should be asked if he has any statement to offer, and should be cautioned not to commit himself. He may be allowed time to prepare it. He may first read it and then examine his witnesses. But the best course is to examine them first, (he can verbally state his object or the purport of their evidence,) for he then has the evidence on both sides to remark upon: the most perspicuous, and best course. Defence, time allowed witness. Statement.

SECTION 10.—FORM OF PROCEEDINGS.

1.—The proceedings of an European (or native) court of inquiry, held at ———, by order of ———, commanding, appointing the following officers to compose it, for the purpose of inquiring into such matter as may be laid before it, by ———. Cawnpore, ———, 1833. Form of proceedings. Heading.

(*President.*)

Major A——, *Regiment* ——. (22)

(*Members.*)

Captain B. and Captain C.

Lieutenant D. *Interpreter.* (23)

Lieutenant E. *Adjutant of the Week.* (24)

The court met this day agreeably to station orders ———. President and Members all present.

2.—Read station order directing the court to meet at ———. (25) The *court* is never *sworn.* Orders read.

3.—Captains F. and G. the prosecutor (or complainant) and defendant both present in court; or not being present—adjourn till to-morrow, owing to the absence or illness of ———. (26) Prosecutor, and defendant present.

4.—Read letter of instructions from the Major of Brigade, &c. enclosing documents marked Nos. 1, 2, 3, &c.; (27) which are entered on the proceedings, or in an Appendix. (28) Instructions read.

(22) If a native court, Subadar, &c.; and the superintending officer under the names of the members, five officers in some cases appointed.

(23) In all cases where there are native witnesses.

(24) Where there are many native witnesses, or witnesses to be kept separate.

(25) President's quarters, or at any mess room.

(26) If unable to attend, the Surgeon of his regiment should certify the fact.

(27) At Cawnpore, where the President, in 1810, objected to the J. A. reading certain papers, which he was instructed to lay before the court, a reference was

Prosecutor. 5.—The prosecutor or J. A. (29) should not burthen the proceedings by any long statement, a short verbal one will generally be sufficient. The court may object to any paper either party wishes to be recorded, if it contains extraneous matter, or that which effects persons not concerned in the inquiry: but, the court should record the tender and their objection.

1st witness. Prosecution. 6.—*Evidence.* Witnesses are not sworn, the only authority for such a measure would be that of His Excellency the Commander-in-chief. (30) Caution witnesses as to their evidence. (*G. O. C. C. 8th February,* 1802.) (31)

1st. Examined in chief, by J. A. and joint prosecutor, (if one.)

2nd. Cross examined by defendant.

3rd. Re-examined by J. A. or prosecutor, &c.

4th. Examined by court. (*Witnesses may be confronted.*)

2nd witness. Prosecution. 7.—Second witness for prosecution—as above.

Prosecution closed. 8.—Prosecution closed, (*adjourn when record.*) (32)

Defence. 1st witness. Defence, &c. 9.—*Defence.* Witness examined: 1st, in chief by defendant; 2nd cross examined by prosecutor; 3rd, re-examined by defendant; 4th, examined by court, (and so with other witnesses.) (33)

made to the Commander-in-chief, who censured the President's conduct in strong terms. The court are not to judge on such a subject, the commanding officer's intentions are to gain such and such information. He desires certain witnesses to be examined. The court cannot deny the J. A. or person to conduct the case, the right to adopt the course which the J. A. &c. has confided to him to pursue. The court are at liberty to propose their own questions. The same rules apply if the President is to conduct the case. If information only is sought, and no opinion is to be given, the court, if they do not examine into the whole of the case, do not do their duty. The commanding officer may have private and confidential instructions from the adjutant-general, which may render it proper for him to keep his own counsel. If an opinion is to be given and the court to say, "whether or not there are grounds for trial," the court must judge of their course, and the J. A. could not do more than suggest (unless ordered to conduct them) a particular course. The President is to presume decorum, but is only a member in other respects; if he advises any course it must be put to the vote, and the majority decide: he has no casting vote, unless reduced from five to four members. Where there being two and two, he should determine the course or admission of evidence, as there would be a stop: but not as to the finding. *Simmonds*, p. 118.

(28) See note 13.

(29) Only to conduct them in particular cases. See notes 10 and 20.

(30) See notes 10 and 21.

(31) An officer has been tried for prevarication.

(32) See notes 16 and 17.

(33) If the prosecutor or court should call any witnesses after the defence, the defendant is entitled to examine them, and to call other witnesses. The defendant

10.—Prosecutor's reply in some cases. (34) Reply.

11.—If any thing in consequence of the defence and reply occurs to the court, other witnesses may be examined.

12.—*Opinion.* An opinion if given is by a majority, and only when ordered—thus, "That the court, from the evidence before them, are of opinion, that there are, or not, grounds for the trial of—." (35) An opinion in many cases is improper, for if an officer be tried notwithstanding the procedure may look a harsh one: and the approving authorities can judge themselves. (36.) Opinion.

13.—*Contempts* are punishable by ordering the party into arrest, or if a soldier, &c. into confinement. (37.) Contempt.

14.—Adjourn *Sini dei. All Sign* See note 36. Adjourn.

may make a written defence after the examination of his witnesses, which is the best course. Captain Larkins, Captain of H. C. Ship Cambden, at Bombay, gave in a written defence, dated 25th July, 1832.

(34) The J. A. read a written reply in answer to Captain L.'s defence

(35) It is said that each member may record his reason for his opinion. In the case of Captain L. at Bombay, two of the five members declined to sign, as the finding was contrary to their opinion, and separately addressed the Secretary to Government. (25th July, 1832.) I humbly apprehend their dissent should have been recorded on the proceedings. The object of a minute is this—a court of inquiry is confidential, and the opinion known to the commanding officer only perhaps; two of the most intelligent may give an opinion which comes nearest to the truth, and while the Commander-in-chief, &c. see that of the majority he may adopt that of the *minority*, and as such members are often selected for their knowledge, &c. it is not like the case of a court-martial.

(36) It is also an unpleasant duty for the court to give an opinion. The cases in note 10 form exceptions: and these cases, where a simple fact is to be proved or where the court is to act as a committee, or *arbitration*, between the individual and Government.

(37) In forming an *opinion* I recommend the plan adopted in the case of private Somerville's petition, (Scott's Greys,) who had been flogged by the sentence of regimental court-martial, whose case was examined on *petition*. J. A. G. the Right Honorable R. Grant. (See *Section* 4.) (4)

"*Analysis of the various papers containing the charges of Somerville against Major Wyndham, which here follows article by article, with the decision of the court thereon.* Analysis of charges and evidence.

"The petition of Richard Smith to the House of Commons."

1st. "In a day or two after, this man was picked out of the ranks." Charge.

"*Incorrect:—As the paper was that of the 27th, and at least only received on that day at Birmingham; and the refusal to mount at the Riding School took place early on the 28th. There is no evidence that Somerville was picked out; on the contrary, it appears that he went to the Riding School, as a matter of course, with the other recruits, to take a lesson!*" (and so throughout) *Opinion of court*, &c. Opinion. Opinion on the whole petition.

"And on the whole, the court is of opinion that, &c. there is no evidence that he

Re-assembly. 15.—The re-assembly of the court of inquiry may take place as often as the commanding officer desires to take fresh evidence, or record any papers.

No right to copy. 16.—Neither party has a right to a copy of the proceedings. (*Home* v. *Lord Bentinck*, (38) *Exchequer Chamber*, 17*th June*, 1820.)

Charges framed. 17.—Charges framed upon the evidence elicited.

Minutes referred to at court-martial. 18.—Minutes may be referred to by the J. A. or court, at a court-martial; but cannot be used as evidence. (39)

Improper conduct out of court. 19.—Improper conduct out of court is punishable while a court is sitting; (40) and being drunk in court, and leaving it, on permission, and not returning. (41) The court should be cleared if there be any discussion.

acted with any views, or from any motives, unbecoming his station and character, or in any such manner as could subject his honor as an officer to just impeachment."

(Signed) T. Bradford, *Lieut.-General and President.*
J. Nicolls, *Major-General.*
A. Campbell, *Major-General.*
George Burrel, *Colonel.*
J. Townsend, *Lieut.-Colonel*, 14*th L. D.*

Robert Grant, J. A. G.

The General Commanding-in-chief directs the foregoing report of the court of inquiry, with His Majesty's pleasure thereon, shall be entered in G. O. book, and read at the head of every regiment in H. M. S. By command of the Right Hon'ble the General commanding-in-chief.

(Signed) John Macdonald, *A. G.*—(*Times*, 16*th August*, 1832.)

Mode of forming the Analysis. *Remark.* If two witnesses speak to a fact thus, p. 3, 15—that they saw the defendant strike prosecutor, put (A) at page 3, 15, and so on for other distinct facts (B) (C) (D). And in the defence the same facts, admitted or denied, (A) 50, 55, and so on, (B) (C) (D) by which means you gain all the evidence clearly on each point and miss no part. The facts may be put on a sheet of paper in the first instance. A *Jemadar*, G. O. C. C. 25th June, 1827, a *Lieutenant*, G. O. C. C. 5th December, 1828, tried, but the President cannot commit, if the court have decided against it. *G. O. C. C.* 24*th July*, 1829. Nor court release a witness from arrest while giving his evidence. *G. O. C. C.* 16*th December*, 1829.

(38) President of the court of inquiry. The proceedings should be taken or sent direct to the commanding officer (sealed). In some cases only, the commanding officer, general officer, adjutant-general, and commander-in chief would see them.

(39) " Nor cannot examine a witness at a court-martial, as to what he may have heard a person say at the court of inquiry: but may examine a witness as to what another witness said before the court. Admissions made before a court of inquiry cannot be read as confessions by the party." (*J. A. G.'s Letter*, 14*th June*, 1814.)

(40) A sepoy going to the quarters of the M. B. and using disrespectful language while his complaint was being examined by a court of inquiry. (*G. O. C. C.* 29*th May*, 1828.)

(41) G. O. C. C. 25th March, 1831.

20.—Prevarication of witnesses are punishable. Prevarication punishable.

21.—*Commission of civil and military officers* to inquire into an officer's conduct at a place where a regular military court cannot be assembled, has taken place. (42) Civil and military commissions.

22.—*Amicus Curiæ.*—Any friend, with the court's leave, may attend, and though counsel are not allowed as a *right* in a preliminary proceeding before a magistrate, (43) still it may be granted as an *indulgence*; but neither can address the court or make any objection. Amicus Curiæ.

23.—*Publication of the Proceedings.* As an officer is not entitled to a copy of the proceedings; (44) so neither should the members or any one else publish their contents, particularly before trial. (45) Publication of proceedings.

SECTION 7. *Court of Inquiry to investigate Criminal Acts, involving Felonies and Crimes, punishable by law,* (distinct from the M. A. &c.) Section 7. Court to investigate.

1.—In such cases, the accused, if known, should not be present. In the case of the inquest on *Hemming*, the murdered murderer—there was no other investigation than that before the inquest, and the accused was not present, but the depositions were read to them in Jail. (46) It is clear that, in this case, the evidence was taken both as a *preliminary* and *final* examination, before trial, and as the inquest returned a verdict upon which the indictment was framed, it was in the light of a grand jury, and if before such a jury, the prisoner is not present, it is because public justice would be defeated, were he to be present. (47) Neither is he entitled to a copy of the depositions. (48) Criminal acts. Murder, &c. Accused not present of right.

(42) This took place at Titalya, by order of the Commander-in-chief, who represented to Government the difficulty of forming a *military* court. The Government ordered a gentleman of the civil service and the commanding officer of the post to take the depositions of the inhabitants complaining of ill-treatment, in the officer's presence. He was suspended and the result published in orders. (No. 141 of 1827, P. V. C. (*Combermere.*) G. O. C. C. 17th July, 1827. (*Combermere.*)

(43) Jervis, p. 240.

(44) Note 38.

(45) Though it would be hard to refuse an officer leave to take notes regarding his own case: still he should be obliged to pledge his word that no improper use is made of them, and that they are not published.

(46) Globe, 6th February, 1830. See Starkie, ii. 492. Russell, ii. 661. And the case of Serjeant Smith, chap ii. *Inquests*, and other cases.

(47) If A knows that B and C have sworn that he A murdered D, has not A every inducement to get such witnesses out of the way, by some means to prevent this effect and subornation of perjury, that the exclusion takes place?

(48) When the depositions were read to the three concerned in Hemming's murder, they were in jail, the other two knew that *Thomas Clews* had confessed his being concerned, and had accused them from the solicitor: but, though you read the depositions, the names of the witnesses are not mentioned, for, if so, the

Sometimes allowed at discretion of court.

2.—There is only one military writer who leaves it to the *discretion* of the court to allow the person whose conduct is to be inquired into to be present. (49) If military men are to be guided by the criminal Law of England, where in Military Law we have no guide, they will exclude in such cases the prisoner's presence.—True it is, that his presence would be a benefit to him, but the reason and equity of Law is in favor of the protection of the many rather than the individual. Therefore, all I would do is, to read the evidence, omitting the names of the witnesses, so that he is informed that he is accused of having murdered D. on such a day, at such a place, in such a year.

Mode of procedure as in Section 6.

3.—The same rules as in *Section* 6, save the above exceptions as to presence before the court. (50)

4.—If the accused be not known, or there are facts requiring elucidation, by the personal examination of any premises, &c. such should not be neglected, thus:

In cases of Arson.

ARSON. The examination of the premises, to observe what combustible materials were found there, and whether any may have been recently brought there. The persons residing thereabouts should be examined, as to any persons having any suspicion against him, or if any one has fled, and where is any property destroyed. See case 3, Section 3, CHAP II. Inquests.

Burglary.

BURGLARY. To view the premises to observe where the entry was made, and how made; whether any instruments were found in the house, and to whom they belong; what and whose property is missing. Is there any property found in the neighbouring villages—any in the boxes, &c. of suspected persons.

Coin.

COIN. In whose possession found; what number of pieces; from *whom* this person obtained them; where did he get them. How long in possession. To trace to the maker. Examine the suspected person's boxes, &c. Dig up the terrace or floors of the house, and out-offices.

Murder.

MURDER. *(Consult Questions in Section* 3. *Chap.* II, *Inquests.)* When and where was the body found? Have any men been absent

prisoners might as well be present. While in jail, proper measures will defeat communications which might, otherwise, enable prisoners to concert plans to rid themselves of any evidence against them.

(49) *Delafons*, p. 46, and he evidently alludes to ordinary cases.

Recommendation.

(50) *Recommendation.* I would strongly urge that courts, in such cases, should be examined, authorized on *oath*; but only the witnesses for the prosecution. The charges should be framed on such evidence. The court should, I think, be allowed to be sworn: but this and other points should be laid down in the *Mutiny Act.*

during the night from any guard, the barracks, or lines? Any quarrel between any men and the deceased? Had the quarrel been made up? Did you ever hear any one say he would be revenged on the deceased—or that he would never be satisfied till he had taken his (deceased's) life? If A is suspected, examine his boxes—see if his clothes are bloody or soiled. (51) Examine under his bed and elsewhere. (52) No place should be left unexamined and what is more, the least delay may allow the escape of the suspected person. A description of him should be sent, by the first post, to the civil authorities.

(51) *Patch*, who murdered *Mr. Blight*, put the stockings he wore when he came up to the window to fire at Mr. B. into the bag containing his dirty clothes, and, having taken off his shoes, of course the stockings had unusual marks of mud; this fact was produced in evidence against him.

(52) A man will sometimes put his bloody clothes in another man's cot, but, then, that they belong to A. is an awkward fact, or if any of D.'s property be found in A.'s possession.

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CHAPTER IV.

King's troops. EFFECTS OF ESTATES OF DECEASED OFFICERS AND SOLDIERS IN H. M. S.

SECTION 1.—THE ACT RELATING TO THOSE DYING WITH OR WITHOUT A WILL.

Officers and others, authorized under the articles of war, to take care of effects of officers and soldiers: may receive the same without taking out letters of administration, &c.

6 Geo. IV. chap. 61, A. D. 1825, 22nd June, 1825. (1) "Whereas an Act was passed in the 58th year of the reign of His late Majesty, Geo. III. c. 73, for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in service, and the receipts of sums due to soldiers: and whereas by an Act passed in the 4th year of Geo. iv. c. 81, Sec. 49, &c., and by certain Articles of War made in pursuance thereof, provision is made for the care and application of the effects and credits of deceased officers and soldiers in the said Company's service; *and whereas the transmission to regimental agents or other persons of the effects, or proceeds of effects, of officers and soldiers dying in H. M.'s service, or the service of the said Company, has been found highly beneficial in securing an early distribution of such effects among the relations of such officers and soldiers at small expense, and many sums are hereby saved to the relations of soldiers, which would otherwise be, from their small amount, wholly lost; and it is therefore expedient to render the provisions of the said recited Acts, relating to such matters, more effectual.* Be it therefore enacted, &c. that it shall be lawful for all officers and persons who may be employed or required by or under the authority of any Articles of War in force for the time being, either for the officers or soldiers in the service of H. M. or for the *European* officers or soldiers in the service of the said Company, to take care of, or collect, or superintend and direct the collection of the effects of officers or soldiers dying in service *out of the United Kingdom,* to ask, demand, and receive any such effects: and to commence, prosecute, and carry on any *actions* or *suits* for the recovery thereof, *without taking out any letters of administration, either*

(1) "To amend 2 Acts; of the 58th, c. 73 of His late Majesty (Geo. III.), for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying in service, and the receipt of sums due to soldiers; and of the 4th year of His present Majesty, (Geo. IV. c. 81, S. 49,) for punishing mutiny and desertion, &c. to render the disbursement at small expense, &c."

with any will annexed, or otherwise, (2) *in like manner in every respect as if such officers or persons had been appointed executors, or had taken out letters of administration of such effects; and no register of any court in the East Indies, or elsewhere, in any colonies or possessions of H. M. abroad, shall in any manner interpose in relation to any such effects, unless required or authorized so to do by any such officers or persons under the provisions of this Act, any Act or Acts of Parliament, Law, Statute, or usage to the contrary notwithstanding.*"

Effects remitted to agents, &c. not deemed assets so as to render administration necessary, &c.

2.—"And be it further enacted, that such effects, or proceeds of effects, when remitted to any regimental agent or other person, under any order or regulation of the Secretary at War in that behalf, or of the Military Secretary to the Government of any of the said Company's Presidencies respectively, shall not, by reason of coming into the hands of such agent or person, be deemed or taken to be assets or effects within the province in which such agent or person shall reside, so as to render it necessary that administration should be taken out in respect thereof in such province, unless administration of any other effects of the officer or soldier to whom the proceeds so remitted shall have belonged, shall have been, or shall be taken out in such province; and it shall be lawful for the Secretary at War, in all cases relating to the effects of any officer or soldier in H. M. service, and for the military secretary to the Government of the Presidency, to which the deceased officer or soldier shall have belonged, in all cases relating to the effects of any European officer or soldier in the service of the said Company, to order that any such effects or proceeds of any such effects shall be remitted to any other place where the same can be more conveniently paid over to the person or persons entitled thereto; and the obedience to any such orders by any agent or person to whose hands any such effects shall come, shall be a sufficient discharge to such agent or person; and no such agent or person shall be liable to any action or suit by reason of any such effects or proceeds of effects having been in his hands, and thereafter transmitted under the order of the Secretary at War, or Military Secretary respectively in that behalf."

Place of remittance may be changed to suit persons entitled to effects.

Agent, &c. indemnified.

Surplus only, after payment of funeral expenses and debts, &c. deemed personal estate of deceased.

3.—"And be it further enacted, that it shall be lawful for the Secretary at War, in the case of any officer or soldier in H. M. service, and for the Military Secretary to the Government of the Presidency to which the deceased officer or soldier shall have belonged, in the case of any *European* officer or soldier in the service of the said Company, to order or direct the payment of any charges or expenses at-

(2) Without a Will. i. e. *Intestate.*

x 2

tending or relating to the *illness* or *funeral* of any such officer or soldier, of any such effects, or proceeds of effects, or out of any *arrears of pay* or *half pay*, and that such charges and expenses, together with all *regimental debts* and *military payments* which may be allowed under the provisions of any Act or Acts of Parliament, or Articles of War made in pursuance thereof, shall be made out of such effects or proceeds of effects, or arrears of pay, and the *surplus* only, after such payment, should be deemed the *personal estate* of the deceased." (3)

Staff officers.

(3) *Staff officers.* (*Article of War* 127.) "When any officer employed on the staff of our army abroad, except in *India*, shall die on service, and the heir or legal representative of such deceased officer shall not be present, the officer commanding on the station shall appoint two officers, one of whom shall be a field-officer if practicable, to secure his effects, who shall, within one month after the death of the officer, make an *inventory* thereof, and after payment, of the military debts, shall lodge the *balance* in the military chest, taking a *receipt* for the same from the officer in charge of the military chest, which receipt, together with the inventory, they shall transmit to our Secretary at War, making at the same time a full *report* of their proceedings to the officer commanding on the station," (if *in India*, a committee would be formed under the *act*.)

Commissioned officers.

Commissioned officers. (*Article of War* 128.) "When any commissioned officer shall die in our service, the major of the regiment, or the officer doing the major's duty in his absence, shall immediately secure all his effects then in *camp* or *quarters*; and shall within *one month* after the death of the officer, with the assistance of two other officers not under the rank of Captain, to be appointed by the commanding officer of the regiment, make an *inventory* thereof, and after payment of *regimental debts* and *quarters*, place the balance in the hands of the paymaster, to be by him paid to the heir or legal representative, if present, at head-quarters; and a report thereof with a copy of the inventory sent to the Secretary at war; but if there be no heir present, then to transmit the inventory, together with an account of the *debts and credits*, to the war office; and deduct the balance in the next regimental pay list; (or if the regiment be in *India*, transmit the balance to the regimental agent:) in order to its being paid over to the legal representative, under the direction of our Secretary at War."

Regimental debts.

Regimental debts. "The Advocate General, Calcutta, referring to 58, Geo. III. c. 73, Sec. 1, declared them to be all sums of money due in respect of any military *clothing*, *appointments*, and *equipments*, or in respect of any *quarters*, or of any *mess*, or *regimental accounts*, and all sums of money due to any agent, or pay-master, or quarter-master, or any other officer, or any such act, or on account of any advances made for any such purpose, any other debts paid by authority of commanding officers will be at their own risk." (*G. O. G. G. in C. 31st July*, 1833, *No.* 83, *A. of* 1823.)

Soldiers.

Soldiers. (*Article of War* 129.) "An account of the effects of a deceased soldier is in like manner to be taken by the officer commanding the troop or company to which the man belonged, in presence of two other commissioned officers, and precisely similar proceedings to be adopted as those directed in the preceding article." (128*th Art.*) *Article of War* 130. "The effects and credits *of*

Deserters.

SECTION 2.—ESTATES OF EUROPEAN OFFICERS, SOLDIERS, &c. IN H. E. I. C .SERVICE, DYING WITH OR WITHOUT A WILL.

(1.—*Vide the Act* 6 *Geo.* IV. *chap.* 61, *A. D.* 1825. IN SECTION 1.)

2.—DEBTS DUE BY DECEASED OFFICERS, &c. *considered regimental debts, to be paid in preference to others.* (*M. A.* 4 *Geo.* IV. *chap.* 81, *S.* 49.) "All sums of money due by deceased officers and soldiers in respect of the military clothing, appointments, and equipment, or in respect of any quarters, or of any *Mess* or regimental accounts, and all sums of money due to any agent or pay-master, or quarter-master, or any other officer upon any such accounts, or on account of any advance made for any such purpose, shall be deemed and taken to be regimental debts, (4) and shall be paid out of any arrears of pay or

Section 2. Company's troops. Regimental debts.

deserters shall be applied in like manner, in payment of their *regimental debts*, and the remainder shall be brought to the credit of the public."

Soldier's Property claimed by his Widow on her re-marrying in India, the Regiment being in India. The money was about £60 in England, left by her former husband, she having three children by him, and married another serjeant of the regiment in India. The commanding officer of the regiment applied through the regimental agent to the Secretary at War. The widow was told, she must administer to the estate, the sum being above that (£50), which is paid on application on proof of being the widow. The registrar of the S. C., Calcutta, advised her sending home a power of attorney, authorizing some person to obtain administration on her behalf, accompanied by an affidavit sworn before a magistrate, stating the death of her late husband leaving her his widow and three children, which papers would be prepared by an attorney. That if she administered in *India*, it would only be incurring unnecessary expense, as the funds being at home, administration must be there. He still recommended a repetition of her application to the Secretary at War; certified by the officer commanding the regiment, (*29th March*, 1831.) Inventory, &c. not to be sent to Military Secretary to Government in case of King's officers and soldiers. (*G. O. G. G. in C.* 11*th March*, 1825. *No.* 79 *of* 1825. *Memo.*) Balance not to be remitted till reference to Pay and Audit Departments. See No. 16.

Property in England.

(4) *Circular from Secretary to Government, Military Department; Fort William, 26th August*, 1831. "It is hereby notified, that debts of the following descriptions, and no others, are to be accounted *regimental debts*, and discharged as such by committees of adjustment."

Regimental debts.

1. "Debts of the nature specified in Sec. 49, 4 Geo. IV. c. 81, *viz.* All sums of money, &c." (*as above.*)

2. "All sums of money due by a deceased officer; and all claims on his estate, on account of servants' wages, house expenses of the current or past month, bills of bazar, Bunceas for gram, or other necessary articles, (see Illness, see Chap. III. Sect. 1,) of daily consumption, funeral expenses, *and commission*, not exceeding 5 per cent. on the sale of effects." ("It is to be understood, that when a mess is established in a corps, bills for liquors of any description cannot be considered as coming with-

In preference to other debts.

Doubts decided by military secretary to government's certificate.

allowances, or out of any prize or bounty-money, or the equipage, goods, chattels and effects of any officer or soldier dying while in the service of the said *United Company*, in preference to any other debts, claims, or demands whatsoever, upon the estate and effects of such officer or soldier; and if any *doubt* shall arise, as to whether any claim or demand made in relation to any officer or soldier is a regimental debt or not, such question shall be decided and concluded by the order or certificate of the Military Secretary to the Government of the Presidency to which such officer or soldier shall have belonged; and all such payments shall be good and valid in law: and every person who shall make any such payment out of any such arrears of pay, effects, or proceeds aforesaid, under the provisions of this act, or in pursuance of any such order or certificate of such Military Secretary, or into whose hands any such money shall come, shall be and are hereby indemnified for, and in respect of such payments, and all other acts, matters, and things done in pursuance of the provisions of this Act, or of the order or certificate of the said Military Secretary, in relation to the *distribution* of such assets; any thing in any Act or Acts of Parliament, or Law or Laws, to the contrary notwithstanding."

Surplus paid to those entitled.

3.—*Surplus*, (Sec. 50.) "That it shall be lawful for such Military Secretary to cause all *surplus* which may remain, after satisfying such regimental debts as aforesaid, to be paid to the person or persons entitled thereto."

in the sense of Sec. 49 of 4 Geo. IV. c. 81, the deceased officer against the estate of whom the claim may exist having been a *married man*: such claims will, in consequence be adjusted as debts other than regimental ones." (*G. O. G. G. in C. 9th December*, 1824, *No.* 373 *of* 1824.)

Private debts.

2. "The claims or demands on *private accounts* of agents, merchants, shopkeepers, tradesmen, money-lenders, cloth-merchants, or dealers, are not in the nature of regimental debts, nor payable by a committee of adjustment, *and it must be remembered, that although money due in respect of the hire or purchase of quarters is, money borrowed for the purpose of building, or purchasing quarters, is not a regimental debt.*"

Paid without Probate.

3. *Regimental debts to be paid without Probate of Will, &c. being obtained.* (*Sec.* 51, 4 *Geo. IV. c.* 81.) "And be it enacted, that all such regimental debts shall and may be paid without any probate of any will being obtained, or any letters of administration, or any confirmation of testament, or letters testamentary, or dative, being taken out by any person, and the *surplus* only of such arrears of pay or allowances, prize or bounty money, equipage, goods, and chattels, or the proceeds thereof, shall be deemed the *personal estate* of the deceased, for the payment of any *duty* in respect of any *probate*, or of any letters of administration, or confirmation of testament, or letters testamentary or dative, or for the purpose of *distribution* as *personal* estate." (*See Sec.* 16, *Art.* 1, *Articles of War.*)

Surplus.

Personal estate.

Sec. 51.—"And it shall be lawful for the said Military Secretary to order and direct the payment or distribution of any such *surplus*, in any case in which the same shall *not exceed* 200 *Sicca Rupees*, *without any probate*, or letters of *administration*; &c. &c. or payment of any *duty* of *stamps*, or upon *legacies* or otherwise; and it shall also be lawful for any pay-master or other person to issue any sum not exceeding the value of 200 Sicca Rupees: which may be due to any officer deceased, or to the widow or relative of any officer deceased, or to the representative or representatives of any such officer's widow or relative, in like manner, without any probate, &c. &c. the same to be paid to the person who shall be notified by the said Military Secretary, as aforesaid, as being entitled thereto; and all such payments respectively shall be as valid and effectual, to all intents and purposes, as if the same had been made by or to any *executor* or *administrator*, or under the authority of any probate, &c. &c.; any thing in any Act or Acts of Parliament, or Law or Laws to the contrary notwithstanding." (*See Section* 16, *Articles* 1 and 2.)

Of 200 rupees without probate, &c.

Or by paymasters.

SECTION 3.—DUTIES OF THE COMMITTEE.

(*G. O. G. G. in C. 25th November*, 1824. *No* 349 *of* 1824.)

Section 3. Duties of the committee.

1.—*To search for a will.* "On the death of an officer a committee is to be invariably assembled, to search for a *will*, examine papers, make an inventory of effects, order a sale by auction of all such articles and stock, as it will be most to the advantage of the estate to dispose of without delay, discharge servants, and settle the account of debts and credits. It is after this process that the inventory called for in the section before-mentioned is to be transmitted to the secretary in the military department, with the sum at which each article sold inserted opposite thereto. The foregoing directions suppose that no will has been found."

Search for a will.

If not found.

2.—*Will if found.* "In the case of a *will* being forthcoming, and an *executor* named, it will be the duty of the committee not to direct the sale of any article but *stock*, (5) or such as are of a *perishable nature*, until they receive instructions from the executor. A separate inventory of the property remaining unsold is to be forwarded to the executor, and a duplicate thereof to the secretary in the military department, at the same time that the inventory of articles sold is transmitted to him. It will be the duty of the committee to attend to the wishes of the executor in the disposal of the property unsold, always

Will if found.

Inventory to executor. Duplicate to military secretary to government. To attend to wishes of executor.

(5) By G. O. Govt. Ft. St. George, 15th February, 1833. "*Livestock*," para. 16.

recollecting that property to a sufficient amount is to be retained in hand, to settle all regimental debts as defined in the 49 Section, 4 Geo. IV. c. 81, taking his written authority as *security*, and for ultimate transmission to the military department, with the secretary in which it rests; finally to cause all *surplus* which may remain, after satisfying such regimental debts as aforesaid, to be paid to the person entitled thereto, agreeably with the 50th Section of the Act."

Amount proceeds to military secretary to government. "The amount proceeds of estates is not to be forwarded by the officer commanding the corps to the general treasury, but to the secretary in the military department, who will adopt the measures to be subsequently taken in every case."

All members sign process. "As the proceedings of all other committees bear the names of the entire of the committee, the proceedings on occasions of this nature are also to be signed by all the members." (6)

Death reported to secretary military department. 3.—*Audit Department to be applied to, by Military Secretary on report of officers' death, to adjust bills.* "Henceforth on the death of an officer being communicated to the Military Auditor General by the Secretary to Government, in the military department, that functionary will immediately cause all bills in his office, connected with the deceased in any way, to be examined and checked, in order that the retrenchments, if any, may be forwarded without delay to the Deputy Paymaster concerned, or a *certificate* stating that no claims appear against the estate of the deceased, as far as the disbursements have been received for audit." (*G. O. G. G. in C.* 12*th Aug.* 1825, *No.* 239 *of* 1825.)

Retrenchments, arrears

Certificate.

Private debts. 4.—Private debts. "Shopkeepers, dealers, or sutlers residing within the limits of a military cantonment, having claims on the estate of any military officer, or medical officer attached to the military branch of the service, are to make application to the legal representative of the deceased; whether such representative be an executor, the Registrar of the Supreme Court, or other administrator. (*Circular A. G. O. No.* 99, 19*th January*, 1830.) (7)

(6) "The proceedings to be sent to the Military Secretary by the committee, *through the commanding officer of the corps*, whose attention is called to *G. O. G. G. in C.* 14*th Oct. No.* 309 *of* 1824, 25*th Nov. No.* 349 *of* 1824, 9*th Dec. No.* 373 *of* 1824, 23*rd Dec. No.* 386 *of* 1824, 11*th March, No.* 79 *of* 1825, 29*th April, No.* 130 *of* 1825, 13*th May, No.* 146 *of* 1825, *and is answerable to Government for the regularity of the process.* (G. O. G. G. in C. 20th May, 1825, *Memo.* No. 153 of 1825.)

"By the *commanding officer*, mentioned in memorandum, Military Department, No. 306 of 1824, is to be understood the commanding officer of the corps to which the deceased belonged." *See note* 8.

(7) To general officers commanding divisions, and notification made by order of

5.—*Sales public.* "It is hereby directed, that no property connected with the estates of deceased officers, &c. of the H. C. service, shall be disposed of by *private sale,* without special permission obtained for the purpose, through the military department, when no will has been found, or from the executor, when there is one to the estate. In the latter case, the amount proceeds are still answerable for regimental debts, and are not to be paid over till all such are satisfied." (*G. O. G. G. in C. 13th May,* 1825, *No.* 146 *of* 1825.)

No private sales.

Supplies not paid till debts settled.

6.—*To show that all regimental debts have been paid, and to draw arrears.* "1*st.* It is hereby directed, that letters transmitting the account balance on the estates of deceased officers, shall specifically state whether or not all regimental debts on the spot, as defined in the 49 Section of the Act, 4 Geo. IV. c. 81, have been satisfied."

Account balance to show that all regimental debts have been paid.

2*ndly.*—"The committee of inquiry will consider it as a standing regulation, that they are to draw all arrears of pay, &c. which may be due to the deceased officer."

Arrears to be drawn.

3*rdly.*—The account of the estate is not to be closed, until such pay, &c. shall have been received."

4*thly.*—"To relieve the committee, however, from the charge and responsibility of keeping in their hands amount of sales received, remittances on account are to be made to this department."

"The 2nd, 3rd, and 4th paragraphs of this order will not apply when there is an executor present, who has duly administered." (*G. O. G. G. in C. 29th April,* 1825, *No.* 130 *of* 1825.)

Not if an executor.

7.—*Bills to remit proceeds.* "Bills for the proceeds of the effects of deceased officers and soldiers, whether in King's or Company's service, shall be granted as soon after the application for the bills as may be practicable." (*G. O. G. G. in C. 2nd December,* 1825, *No.* 335 *of* 1825.)

Bills immediately granted by paymasters.

8.—*Illegible proceedings returned.* "The names of deceased officers and soldiers, &c. on whose account remittances are made to the general treasury, being frequently written illegibly, a neglect which is productive of much inconvenience, the sub-treasurer is directed to return all such papers to the parties transmitting them for correction, *bearing postage.*" (*G. O. G. G. in C. 26th August,* 1824, *No.* 252 *of* 1824.) (8)

Illegible proceedings returned.

By Sub-Treasurer.

Government, that any applications made to the Military Secretary to Government would be returned bearing postage.

(8) "It is to be clearly understood, that a commanding officer, ordering a committee to assemble on the decease of an officer to search for a will, &c. &c. is considered responsible for the regularity of the proceedings of the committee."

Copy of proceedings to Military Secretary to Government.

9.—*Copy of Proceedings to Military Secretary to Government.*

"With advertence to Sections 49, 50, and 51 of the Mutiny Act, 4 Geo. IV. chap. 81, and to the corresponding Section 16 of the Articles of War, the *inventory* and other documents called for in the latter, of the property, debts and credits of deceased officers of the Bengal army are to be furnished direct to the office of the Secretary to Government, in this (Military) Department, as soon after the decease of the officer, as circumstances will admit." (Memorandum, *G. O. G. G. in C.* 14*th October*, 1824, *No.* 309 *of* 1824.) (9)

2. "Whenever any doubt may arise, the committee will take the opinion of the commanding officer thereon."

3. "In order that the commanding officer may be in full possession of the proceedings of the committee, such proceedings are to be invariably presented to him by the president, for transmission to the Secretary to Government in the Military Department."

Officer dying away from his station.

An officer dying not at his own station. 4. "When an officer dies at a station, not that to which he properly belongs, it becomes the duty of the officer commanding to take all necessary steps, as if the deceased had belonged to such station, and the commanding officer of the corps or station, to which the deceased was more immediately attached, will likewise, on receiving intimation of the decease of the officer, take the prescribed measures with regard to the property which may be forthcoming." (*G. O. G. G. in C.* 23*rd December*, 1824, *No.* 560 *of* 1824.)

(9) "Several instances having recently occurred, in which documents connected with the estates of deceased officers of the Honorable Company's Service have been irregularly transmitted by the president of the committee of adjustment *direct* to the Secretary to Government in the Military Department, instead of being forwarded through the commanding officers of the regiment, the particular attention of all commanding officers is again desired to the instructions contained in Government G. O. No. 153, 20th May, 1825, which direct, that all papers connected with such estates shall be transmitted to the Secretary by the committee, *through the officer commanding the corps*, who will be held accountable for the regularity of the documents."

"In the case of an officer dying in absence from his regiment, and a committee of adjustment being assembled by the officer commanding the station at which the death may have occurred, agreeably to the instructions contained in the 4th para. of Government G. O. No. 386, 23rd December, 1824, (*note* 8,) such committee will transmit all papers connected with the estate of the deceased to the Secretary in the Military Department, *through the commanding officer of the station.*"

"Committees of adjustment are invariably to be furnished, on assembly, with a transcript of the "*circular*" to commanding officers of corps and stations from the Military Department, of 26th August, 1831, explaining the nature and extent of claims which may be properly discharged as *regimental debts*; and commanding officers are again warned of their responsibility for any unwarranted payments which may be made by the committee convened under their orders." (See *Regimental debts, note* 4.) G. O. G. G. in C. 15th October, 1832, No. 161 of 1832.

10.—*Surplus or balance not sent home, till reference to the Pay and Audit Departments.*

Supplies not sent home till reference to pay and audit departments.

"Considerable inconvenience having been experienced from remitting home the balance of the estates of the deceased officers and soldiers of H. M. service without, &c. &c. pay-masters and others, who shall remit the proceeds of estates, or pay the same over to the heir or executors of deceased officers or soldiers, without previous reference to the pay and audit departments, shall be held personally responsible for all public claims which may be preferred against the said estates, to the extent of their remittances or payments." (*G. O. G. G. in C. 9th June*, 1826, *No.* 129 *of* 1826.)

If responsible for debts to Govt.

11.—*Deposits in the General Treasury.*

Deposits in the General Treasury.

1.—"All applications for sums of money deposited in the general treasury on account of the estates of deceased officers and soldiers of the H. C. service, must in future be addressed to the sub-treasurer, for whose guidance in the disposal of such deposits, the following rules have been prescribed by Government."

Apply to Sub-Treasurer.

2.—"All monies deposited in the general treasury on account of the estate of a deceased *European* commissioned or warrant officer, are to be paid on application, to his legal representative, on production of *probate* of will, or letters of *administration*, as the case may be, granted by the Supreme Court, and of a *certificate*, signed by the military auditor-general and the accountant in the military department, stating that the accounts of the deceased have been finally audited, and that there are *not* any *demands* against his estate on the part of Government."

Pay and audit departments certifying no demands by Government.

3.—"Should the applicant be the constituted attorney of the legal representative, he must produce, in addition to probate or letters of administration, the power of attorney under which he claims."

If attorney.

4.—All monies deposited in the general treasury, on account of the estate of a deceased European non-commissioned officer, or private soldier, which continue to be claimable in India, under the rule laid down in G. O. of Government, 4th October, 1822, are to be paid on application, to his legal representative, on production of probate, or letters of administration, as the case may be, or to the constituted attorney of his legal representative, on production, in addition to the above documents, of the power of attorney under which he claims."

If claimable in India.

5.—All applications for deposits no longer claimable in *India*, and all applications unaccompanied by probate or letters of administration, are to be rejected, with the exception of those of the latter description, made for sums not exceeding Sa. Rs. 200, which are to be referred by

When not claimable in India.

the sub-treasurer for the decision and orders of Government." (*G. O. G. G. 7th December*, 1827, *No.* 260 *of* 1827. (10)

Rates of exchange. 12.—*Rates of exchange for remittances to England.* No. 294 of 1825, two shillings per Sicca Rupee.

Intestates. 13.—Intestates. I.—" A question having arisen as to the effect of *Article* 3, *Sec.* 19 *of the Articles of War of* 1822, (11) in excluding the estates of *officers of H. M.'s regiments serving in the East Indies*, from the operation of the *Act of Parliament*, under which the *registrar* of the Supreme Court of Judicature is empowered and required (12) to apply for letters of administration of the estates *of British subjects dying intestate*, the G. G. in C., with a view to remove any doubt on the subject, directed a reference to be made to the advocate general, whose opinion is to the following effect; *viz.* ' That the Article and Section above quoted cannot be legally held to bar the right of the executor or administrator, within the territorial possessions of the E. I. Company, to receive the surplus effects of a deceased officer, after payment of his regimental debts and expenses of interment; and that, *as being a part of the public duty of the registrar of the Supreme Court*

(10) Half yearly lists of deposits in the General Treasury, published half yearly, *European* officers and soldiers, 1st January to 30th June, and 1st July to 31st December, under G. O. G. G. in C. 20th December, 1822. *Native* officers and soldiers' estates are included, and published in the beginning of each year, and for three years successively.

The money of *European* officers and soldiers deposited in the General Treasury, where, or at the E. I. House, application should be made by the party entitled, in the case of *Intestates'* property. If the will of A. leaves property to B. the executor will of course pay it; if no executor named, B. could administer.

(11) See Articles of War, 128, 129.

(12) I humbly submit that under the Act 6, Geo. IV. chap. 61, A. D. 1825, (*see Section* 1,) the *registrar* has nothing to do with such estates unless directed by the committee. The *preamble* of the Act proves the object of the legislature to be, that "*he shall not interpose.*" The opinion of the advocate-general declared the *registrar* to be empowered under the Act, (39 *and* 40, *Geo. III, c.* 79,) to administer. The Act 6, Geo. IV. chap. 61, declares the intention to be to give to *officers* the advantage soldiers had, by remittances through the regimental agents, without *loss*. Now it is clear, that the registrar has the use of the money for a year, and though it is a delicate subject to touch upon, and no offence intended, it will be recollected that the Court of Directors, in the late case of a registrar at Madras, would not be answerable for money lost. As the concluding words of the 6, Geo. IV. chap. 61, Sec. 1, are "*Any Act, or Acts of Parliament, law, statute, or usage to the contrary notwithstanding,*" I should hope that my brother-officers, &c. may have the full benefit of the Act, as the above words annul the 39 *and* 40, *Geo. III. c.* 79, *as to intestates being military persons.*

to apply for letters of administration of all British subjects dying intestate within the territories subject to the Presidency of Fort William, the right in question generally devolves on that officer."

2.—"In order therefore to afford the registrar the most early and authentic information of the state of the assets of British officers dying under such circumstances, the G. G. in C. directs, that the Presidents of the Committee which assemble on the demise of officers *dying intestate*, whether in H. M. (13) or the H. C. service, shall forward directly to the registrar of the Supreme Court a copy, duly authenticated, of the proceedings of the committee, as soon as they are closed." (*G. O. G. G. in C.* 31*st July*, 1823, *No.* 83, *A. of* 1823.) Inventory, &c. to Registrar.

14.—*Rules on the formation of the Committee, Proceedings, &c.* Form of proceedings of the committee.

1.—The 16th Section, Article 1, requires, if a regimental committee, the Major of the regiment, or officer doing the Major's duty, to be the President; and two other officers, not under the rank of Lieutenant, and of not less than eight years, as commissioned officers. If there be no Major, the senior Captain should be President. (14)

2.—If dying away from his station (*see note* 8), the committee to be formed there, and by the regiment. If dying away from the Regiment.

3.—*Heading of proceedings, &c.* Proceedings of a Committee assembled by order of ———, commanding ——— Regiment, agreeably to regimental orders, dated ———, held at the quarters of the late ———, to search for a will, and take an inventory of his effects, and appointing the following officers to compose it: Heading of proceedings.

President.

Major ———.

Members.

Captain ———, Captain ———. (15)

Kurnal, ———, 1833.

1.—The committee assembled this day, at the quarters of the late ———, and on searching found a will in the writing-desk, &c. of the deceased. (15½) See No. 2, Section 3. Search made.

2.—The will being found, and an executor named being on the spot, the inventory is to be taken thus: Will found.

(13) See conclusion to note 3, prohibited.

(14) If a soldier's estate, the officer commanding the troop or company, and two other commissioned officers.

(15) Of those ranks, if procurable, as the committee's duties are important; and whether station or regimental.

(15½) The death to be reported to the Military Secretary to Government, No. 3, Section 3, and to the Adjutant-General and Military Secretary to the Commander-in-chief. (*G. O. C. C. 7th September*, 1832.)

Inventory. No. 1.—Inventory of cash, bills, &c. found in the possession of the deceased.

No. 2.—Inventory of Plate, &c.

No. 3.—Ditto of clothes.

No. 4.—Ditto of Wines and Liquors.

No. 5.—Ditto of books.

No. 6.—Ditto of Buggy, Carriages, &c.

No. 7.—Ditto of horses and cattle.

No. 8.—Ditto of live stock.

No. 9.—Description of Bungalow, &c.

No. 12.—Inventory of cooking utensils.

No. 13.—Ditto of crockery-ware, glass-ware, &c.

No. 14.—Ditto of camp equipage.

No. 15.—Of servants. (16)

Private papers. 3.—If there be an executor, the private papers should not be examined. If no executor, only such as relate to debts.

Debts. 4.—*Debts.* To collect from the papers any bills, or debts due, and make an inventory of them, distinguishing *regimental* from *private* debts. (*See regimental debts, note* 4.)

Funeral. 5.—*Funeral.* The directions for the funeral to be on a respectable, but not expensive, scale. (17)

Sale. 6.—The inventory being made, and executor in India, nothing but stock (18) or perishable articles (19) should be sold without his instructions.

Public. 7.—*Sale* to be *public,* (No. 5,) and duly advertised to give notice to stations, &c. in the division. (20)

Arrears. 8.—*Arrears of pay* not to be drawn by the committee, if there be an executor in India.

Servants' wages. 9.—*Servants' wages.* Repay them their arrears of wages, and discharge them at once, except those actually required. (21)

On an officer's death a guard should be placed over the property, and the property locked up: till the committee be formed, no one allowed to enter the house.

(16) Servants should not be discharged till absent articles are accounted for. Any friends should be examined if they know any thing of the affairs of the deceased.

(17) The adjutant usually orders the coffin.

(18) See Note 5, of course *live stock*, i. e. sheep, farm-yard stock, &c.

(19) The committee must judge of this according to the season, &c.

(20) For private sale, must apply to executor, or if intestate, to *Military Secretary to Government*, (*No.* 5.)

(21) Sirdar bearer, and those for horses, till sold. Where an officer was dying and desired to give his servants a year's pay, the medical officer who attended him was advised to make an affidavit of the fact, as the executors were agents.

10.—*Bazar and regimental debts,* to be paid and receipts taken. (22) Regimental debts.

11.—Inventory of things unsold, No. 17. Inventory of things unsold.

12.—To consult commanding officer of regiment, or station, as the case may be, on any doubtful points, (*note* 8,) and Military Secretary to Government, as to doubtful regimental debts. To consult commanding officer.

13.—INTESTATES. See No. 13, Section 3, ante. Intestates.

1.—Under No. 1, Section 3, the committee would act, and sell as here directed; but of course if there were no debts to pay, except what the arrears of pay would pay, valuable horses, the Bungalow, &c. should not be sold (23) to a disadvantage, and where delay is not of moment. The delay and cause should be reported.

2.—The arrears are to be drawn, and any prize-money, (*see No.* 6.) The account is not to be closed till drawn and received. The amount after paying regimental debts to be remitted to the Military Secretary to Government, reporting the settlement of all regimental debts. Arrears. Account not closed till arrears received.

3.—The proceedings are to be transmitted by the committee through the commanding officer of the regiment, or station, as the case may be. A copy of the proceedings to be sent to the registrar, (*see No.* 13—2,) and another to the Secretary to Government, Military Department, (*No.* 1.)

4.—There is to be also a regimental committee if the officer die at another station, (*notes* 8 *and* 9,) or, if a staff officer, a station committee, as well as at the station to which he properly belongs, where the officer died. The commanding officer of the corps sends a copy of the regimental proceedings to the Military Secretary to Government, (24) also, as well as the commanding officer of the station where he died. Regimental committee.

(22) Taking executor's written authority as *security,* No. 2. Though the *M. A. Sec.* 51, *authorizes their payment. If any* doubt as to a regimental debt, refer to the Military Secretary to Government. (*M. A.* xlix.) As to *private debts,* see No. 4.

(23) At many out-stations, property so sold must be to a disadvantage. If a relief is to take place, in some cases waiting for the arrival of a corps: sufficient property must be sold to pay regimental debts.

(24) Both committees send their proceedings, agreeably to the orders, separately. I would suggest that either the station committee where the officer dies, or the regimental or station (to which he properly belongs) committee should be the chief committee, and the other send their proceedings to the chief committee only, as the executor or Military Secretary, &c. would still obtain the whole proceedings: now, there may be two communication, relating to one estate.

Difference between dying with and without a will. *Remarks.*—The difference between the estate of an officer dying leaving a will, and not leaving one, is this, that, in the case of the *intestate,* the committee, besides making the *inventory,* and paying servants and regimental debts, &c. as in the case of a will being found, *draw the arrears of pay, &c.*—sell such property as may be necessary to pay debts, and as to the rest of the property, obtain the sanction of the Secretary to Government, Military Department, (No. 5,) who alone can allow of a *private* Sale.

Will if found, and no executor in India. 14.—*If Will found and no executor in India.* The committee must apply to the Secretary to Government in the Military Department, who will give the usual orders, as to Sale of property not required to pay regimental debts: to sell *stock, or* perishable articles, the committee have authority. Nos. 1 to 17.

15.—The whole inventory being made, the amount of cash found, pay and allowances drawn and received, and the items of the account of Sale, with the sum sold for, opposite to each article; and the payments made should be formed in the account current, in the following form: after having been first entered into an account *Dr.* and *Cr.* as money is realized, or paid away.

DR. *The Committee* ———, *in Account Current with the Estate of the late* ———, *of* ——— *Regt. deceased.* CR.

1833		Rs.	A.	P.	1833		Rs.	A.	P.
	To Cash Bills, Company's paper, &c. found among the effects,					By Cash paid Funeral Expenses, Voucher No.—			
	To Pay and Allowances, as follows:					„ Do. Servants' Wages, ditto No....			
	To gross amount of Sale Account, ...					„ Do. House Expenses, ditto No.			
						„ Do. House Rent, ditto No.			
						„ Do. Mess, ditto No.			
						„ Do. Military Fund, ditto No.			
						„ Do. Band Fund, ditto No.			
						„ Do. Auctioneer's Commission or Amount of Account Sale, 5 per cent.			
						(25) Total Cash paid, ...	0000	0	0
						By Balance paid to the Executor, or to the Secretary to Government, Military Department, or Registrar, as the case may be, ..	0000	0	0
	(* These two statements to agree.)	*000	0	0			*000	0	0

Station ———. Date ———.

N. B. The original Receipts should be sent with the process, and the Committee should attest copies, and also a copy of process to be lodged in Regimental or Station Office.

(Signed,) ——— President, (Regiment.)
——— Member, (Regiment.)
——— Member, (Regiment.)

(Signed) ———, Commanding at ———, or Regiment. (26)

(25) Fort St. George Government Orders, 15th February, 1833. The words are, "By balance paid into pay office, as per cash receipt of this date, and on this day forwarded to the sub-treasurer for his receipt."

(26) And transmit them, and he is answerable for their correctness.

Remarks.—Where an officer died, leaving a will but *no executor*, the Secretary to Government, Military Department, directed the President of the Committee (as no one had administered), to act as if the deceased had died *intestate*. (*Lt. No. 55, 3rd March*, 1826.)

In another case, where an officer died in debt, and whose property was to go to his widow, trifling trinkets were allowed to be given to her, but the residue of property ordered to be sold in satisfaction of his debts. (*Lt. No. 97, 7th April*, 1826.)

European soldiers should be encouraged to make wills, and be informed, that if the money they leave be not claimed, it is made over to Chelsea Hospital. They should distinctly state to whom they wish to leave their money, and where the party lives, even the village, &c.

In *H. M. service*, officers commanding companies, &c. certify, *upon honor*, as to every just *credit* being allowed to the soldier, &c. (*Orders of Secretary at War.*)

SECTION 4.—ESTATES OF DECEASED EUROPEAN OFFICERS AND SOLDIERS, (*Madras Army.*)

Madras Regulations.

(*G. O. Government, Ft. St. George, 15th February, 1833.*) "The special attention of commanding and other officers is required to the provisions of the 6, Geo. IV. cap. lxi. regarding the estates of European officers or soldiers of the Company's service, and to the following explanatory regulations on the subject."

Committee to assemble within twenty-four hours.

1.—"Upon the death of any European officer or soldier, whether *intestate or otherwise,* his effects then in camp or garrison are to be secured, under the authority of the commanding officer of the regiment or station to which the deceased belonged, as directed in Section 16 of the Articles of War; the committee invariably assembling within 24 hours from the time of the casualty."

If no regimental officers, other officers.

2.—"Should there not be officers present with the regiment of the description specified in Art. 1, Sec. 16 of the Articles of War, then the committee may be composed of such as may be available, the seniors being selected."

Inventory of effects and accounts of credits.

Pay, &c. Regimental debts.

Register.

Copy to Military Secretary to Govt.

3.—"The committee are to take a correct inventory of the whole of the effects and account of the credits of the deceased, mentioning especially, and in all cases, whether any and what amount of cash was found in the deceased's possession, and whether any and what amount of pay and allowances was due to the deceased; also, an account of his regimental debts: and the same are to be entered in a book to be kept for that purpose, to be entitled "*register of estates,*" which book shall form a regimental record, and a copy of such inventory and account shall be forthwith forwarded to the Secretary to Government in the Military Department; such copy to be attested, a true copy, from the entry in the register."

To investigate debts.

4.—"It will be the duty of the committee, in preparing such account of credits and debts, carefully to investigate the latter, and to record their opinion as to the correctness of each claim."

What are regimental debts.

5.—"Claims coming decidedly within the description of *regimental debts,* to wit, *regimental mess accounts, charges or expenses relating to the illness or funeral of deceased officers and soldiers, charges for house rent, servants' wages, and house expenses, for periods not exceeding one month, and the portion of the month in which the casualty may occur, may be discharged by the commanding officer, without previous reference to Government in the Military Department.*"

Private debts paid by person administering.

6.—"All other claims preferred at a regimental head-quarters, such as accounts with station shop-keepers, loans, &c. must be left for

adjustment by the person who may eventually administer to the estate."

7.—"It will be the duty of the commanding officer to draw, without delay, whatever arrears of pay and allowances may be due to the deceased." (27) Commanding officer to draw arrears of pay, &c.

8.—"In cases of *intestacy*, it is ordered, that within one fortnight after the taking of the inventory, a sale of the effects shall take place by public auction, to the highest bidder, due notice thereof having been given; and within one fortnight after such sale, the account-sale shall be entered in the "register of estates," and a copy of such account-sale shall be forthwith forwarded to the Secretary to Government in the Military Department; such copy to be attested as directed in par. 3." Intestate. Sale of effects.

9.—"The officer commanding will be accountable for the recovery of the amount of all purchases, and for the correctness of all payments from the proceeds of estates. It being his province to nominate the *auctioneer*, and when he may see fit, to prohibit the delivery of goods, until their value has been received. *Credit* may be given to *military persons*, but not beyond the second issue of pay after the sale." Commanding officers accountable for proceeds of sale. Auctioneer. Credit.

10.—"It is ordered, that within one fortnight after such second issue of pay, the officer commanding shall cause to be entered in the said register an account in the form annexed, debiting himself with all the credits of the estate, and crediting himself with all the payments of regimental debts, and shewing that the balance has been lodged in the pay office, and a *transfer receipt* obtained, and a copy of the same attested, as in par. 3, together with all *vouchers* for all *payments*, and the sub-treasurer's receipt for the *balance* is to be forwarded to the Secretary to Government in the Military Department, as soon as the sub-treasurer's receipt for the balance shall have been received." Form. Balance of account. Debtor and creditor. Money lodged. Receipts. And that of Sub-treasurer, sent to Military Secretary to Government.

11.—"The *auctioneer* shall in no case receive a greater *percentage* or remuneration than 5 per cent. which shall be paid by the commanding officer on the day on which the accounts of the estate are finally closed, and if his accounts are correct and the amount of purchases received, but not otherwise." (28) Auctioneer. Not more than 5 pr. ct.

12.—"If there be any *house* or article of great *value*, which may seem to the commanding officer to justify the *postponement* of the *sale*, Property of great value.

(27) This should be in Bengal, whether there was an executor or not.

(28) The auction duties of Calcutta, &c. should be attended to: the rates in selling valuable property are 1 to 2 per cent., and 5 per cent. on that of less value—5 per cent. is too much for selling houses, &c.

Sale when postponed.

or the *extension* of *credit* beyond the time by this order limited, he may, if he sees fit, postpone the sale, or, on his own responsibility, make a special agreement for the payment of the price of such house or article of great value; such postponement of the sale, and such special agreement, being immediately brought to the notice of the Secretary to Government in the Military Department, together with the special circumstances which have seemed to such officer commanding to justify a departure from the course prescribed in the 8th par. of this order."

Military purchasers, goingonleave, to pay before going, &c.

13.—"When any *military* person indebted to an estate shall, before the full payment of the account of his purchases, apply for leave of absence on sick certificate, or otherwise, it will be the duty of the officer in charge of the estate from which such purchases have been made, to recover the payment of the debt prior to the departure of the individual from his station, or to report the *default* to the Accountant General and to the Secretary to Government in the Military Department."

Will, but no executor within presidency. Copy of inventory and will to Military Secretary, &c.

14.—"In the case of a *will*, and no executor named, being at the time of the death within the Presidency of Madras, the officer commanding shall, together with the copy of the inventory, and account of credits and debts mentioned in par. 3, forward to the Secretary to Government in the Military Department, a copy of the will. In all other respects the officer commanding will proceed as in the case of an intestacy." (*See par.* 8.)

If executor within presidency. Copy of inventory and will, &c. to Military Secretary, and

15.—"In the case of a *will*, in which an executor is named, who at the time of the death of the deceased is within the Presidency of Madras, the officer commanding shall, together with the copy of the inventory and account of credits and debts, mentioned in par. 3, forward to the Secretary to Government in the Military Department, a copy of the will."

Not to sell, *except live-stock.*

16.—"It will in this case be the duty of the officer commanding not to direct the sale of any article, except *live-stock*, or such as are of a perishable nature, until he shall receive instructions, in writing, from the executor."

And copy of will and inventory. Account. Credit and debts, &c.

17.—"The officer commanding shall forward to such executor a copy of the will, also a copy of the inventory, and account of credits and debts mentioned in par. 3, noticing at the foot of such copy of the inventory the live-stock and perishable articles which have been sold, and the prices which were given for the same respectively."

Pay regimental debts.

18.—"The officer commanding must, in the first place, take care, that all regimental debts, &c. are paid; and in the next place he will

attend, as to the disposal of the property of the deceased, as nearly as he can, to the wishes of the executor, expressed in writing." Consult executor as to sale.

19.—"When an officer, whether *intestate*, or otherwise, dies at a station to which he does not properly belong, it will be the duty of the officer commanding to take all the necessary steps, in conformity with the preceding instructions; and the commanding officer of the corps or station to which the individual was attached, will likewise, on receiving intimation of the officer's decease, take similar measures with regard to the property which may then be forthcoming." Dying away from his station.

20.—"An officer commanding, quitting, or being relieved from the charge of a regiment, shall render to the officer succeeding to such a charge, the account of every estate, whether of an intestate or otherwise, the accounts and balance of which shall not have been already rendered to the Secretary to Government in the Military Department, or executor, as the case may be; and such succeeding officer will be held responsible for the correctness of the account, unless at the time of receiving charge of the regiment he objects to the account, and brings such objection to the notice of the Secretary to Government in the Military Department." New commanding officer receives accounts of estates, &c. unless he objects, &c.

21.—"In the case of any officer commanding dying, or being by sickness incapacitated from rendering any account, the next senior officer shall direct the assembly of a committee, consisting of the three senior officers of the station or regiment, for the purpose of taking an account of all estates, whether of intestates or otherwise, the accounts and balances of which shall not have been then already rendered to the Military Secretary or executor, as the case may be; and the committee so assembled shall render the accounts taken to the officer succeeding to the command, in case of such death or sickness." Commanding officer sick or dying, next senior officer to take charge and appoint a committee.

22.—"Officers commanding will be held responsible for the strict fulfilment of the several provisions of this order, and any loss, which may arise from a deviation therefrom, will be recovered from their pay and allowances under the authority of the Government." Loss from neglect recovered from their pay, &c.

"They will likewise, on making over an estate to the Secretary to Government in the Military Department, or to the executor, or to the registrar of the Supreme Court, as the case may be, submit a notification of their having done so, for publication in the Fort St. George Gazette." Notification of making over estates.

(See *account balance* at the end of Section 3.)

SECTION 5.—ESTATES AND EFFECTS OF DECEASED NATIVE OFFICERS AND SEPOYS.

Native deceased commissioned officers.

1.—*Measures to be taken by commanding officers of corps for the realization and disposal of the property of native commissioned officers deceased.* (G. O. G. G. 17th June, 1809.) (29) 1.—"When any native commissioned officer may die or be killed in the service, the commanding officer of the corps shall secure his effects, and direct an *inventory* thereof to be taken by a Subadar and two Jemadars, which is to be lodged in the Adjutant's office: if there be no executor on the spot appointed by the deceased, the effects are to be publicly sold; and the commanding officer, after discharging the debts of the deceased, specified in the 13th Section of the Articles of War, *viz. his debts in camp or quarters, and the expenses of his interment,* shall account for the residue to the heir or heirs declared by *will,* whether written or verbal, (30) or in failure of such, to the legal representatives of the de-

Inventory.

If no executor on spot.

Debts.

(29) Explaining Section 13, Articles 1 and 2, and containing the substance of the regulations of Government, 7th May, 1781, 21st October, 1792, 12th August, 1793, and 14th May, 1807.

(30) Every inducement should be given to native officers and sepoys making wills, and officer commanding troops and companies would save much trouble, and do great good by this course, for there is, at times, a difficulty in knowing who is the legal representative; whenever any one does not appear, the officer should ascertain the truth in presence of the native committee, and by the examination of witnesses, to ascertain if the deceased ever named the claimant as a relation; or, if he is to their knowledge a relation. They should take down his name, village, &c. and if the native officers, &c. would leave a paper similar to the roll furnished in the case of pension granted under G. O. G. G. 28th October, 1825, 16th August, 1828, and G. O. C. C. 2nd April, 1827, it would save much trouble. The officer should tell the native officer, &c. that he will assist him in making his will, and that he may conceal his intentions, if he likes, by supposing fictitious names to represent the persons to whom he wishes to leave his property, as بپ جپا may mean his wife, son, and daughter, that he wishes to leave one-third to, and one-third each to تپ and بپ; and to explain, that if he makes no will, and his real relation be distant, and the claim not made within a year, the money is sent to the general treasury. Another object of the above roll is, to enable the committee to find out where the relatives live, "*with whom they are to communicate.*" (*G. O. P. C. C. 19th May,* 1807.)

2.—*Claim, if instituted in the civil court.* "The commanding officer not to decide on *contested claims* of succession to the estate of a deceased native officer or sepoy, especially when such claim may have been instituted in the civil courts, nor is the rule for a remittance to the Presidency, at the end of 12 months, when no executor, heir or other legal representative may attend, applicable to such case, in which it would be more convenient for the parties concerned, that the property in the hands of the commanding officer, (after payment of the expenses

ceased; and in the event of no executor, heir, or other representative

and debts which he is authorized to discharge) should be deposited in the zillah or city court wherein the suit may have been instituted."

"The commanding officer will accordingly comply with the requisition of the zillah or city court, wherein the suit may be depending, for delivering into court, the amount of the property in his hands." (See *civil suits*, G. O. G. G. in C. 23rd August, 1816, and 9th June, 1826, CHAPTER 7.)

An additional motive to urge the making of wills, to declare that any doubts as to the intention and meaning of the will, to be settled by the arbitration of friends, or certain native officers of the regiment, according to native law and equity.

Doubts as to claimants.

3.—*Doubts as to claimants.* "Wherever any doubt may arise with regard to the right of persons who may claim the estates of deceased officers or soldiers, the testimony of any native commissioned or non-commissioned officer, or even private sepoy in the service, of good and respectable character, is, together with the receipt to be taken on the occasion, to be considered as sufficient ground for making payment to the claimant; and all property of that description which may remain unclaimed, at the expiration of one year, from the date of casualty, is to be forthwith remitted to the general treasury at the Presidency, agreeably to the regulations now in force." (*G. O. P. C. C. 19th May*, 1807.)

Order of succession. Hindoo, &c.

4.—*Order of succession.* "With respect to the order of succession, or descent, to be observed, as founded on the rules of inheritance, according to the tenets of *Hindoo* and *Mahommedan Law*, it may be difficult, if not impossible, to prescribe any particular order of descent, which shall not be liable to some kind of exception, as it is well known, that, among *Hindoos*, these rules of inheritance differ in different parts of the country, and among *Mahommedans*, no order of succession is recognized, inasmuch as a plurality of persons succeed simultaneously, according to their respectively allotted shares; the committee of officers who may, therefore, be assembled to investigate claims to *pensions (and the same rules should govern the cases of intestates)* will be cautious in their attempts to establish any particular line of succession, but endeavour to determine every case according to the individual circumstances attending it."

5.—"The following primary rules of succession, however, may be considered generally correct, and serve, in a great measure, as a guide for committees in all ordinary cases:—

Hindoos.	*Mahommedans.*
1. Son.	1. Son.
2. Sons' sons.	2. Sons' sons.
3. Widows.	3. Daughters.
4. Daughters.	4. Daughters' sons.
5. Daughters' sons.	5. Fathers.
6. Fathers.	6. Mothers.
7. Mothers.	7. Widows.

(Copies in the *Persian* and *Nagree* characters are with corps.) (*G. O. G. G. in C. 28th October*, 1825, *No.* 293 *of* 1825.) See No. 7 in this note.

6.—*Deposits in general treasury.* "Paid on application, to any claimant producing a certificate, signed by the officer commanding the regiment or corps to

of the deceased attending and establishing his claim, (31) within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate, is to be remitted to the general treasury at the Presidency, by a bill of exchange to be granted on the sub-treasurer by the pay-master of the division to which the deceased belonged."

Native non-commissioned officers and sepoys. 2.—*Native non-commissioned officers and sepoys' estates.* "A similar mode of proceeding is also ordered when any non-commissioned officer or sepoy shall die or be killed in the service; except that the duty prescribed for the officer commanding the corps, in the case of a native commissioned officer, is to be executed by the officer commanding the troop or company, in the case of a non-commissioned officer or sepoy." (32)

Dying away from corps. (Note 8, though not provided for.)

Regimental debts. 3.—*Regimental debts.* See *ante.*

Arrears of pay. 4.—*Pay and arrears of pay drawn.* "Half a month's pay to be drawn for native officers and sepoys who shall die on or before the 15th of the month; and a full month's pay for those, who shall happen to die after that period." (33)

Registers of commissioned officers' estates. 5.—*Register,* (*G. O. P. C. C.* 19*th May,* 1807.) "Registers, containing distinct statements of the proceeds of estates of all native commissioned officers, are to be kept by Adjutants of corps, respectively, under the immediate direction of their commanding officers."

Of non-commissioned officers and sepoys. 2.—"Similar registers are to be kept by all officers in command or charge of troops or companies, &c. of the estates of all non-commissioned officers and privates, to be made up to the 31st December of each year, at which period copies are to be laid before the commanding officer, for the purpose of being recorded by Adjutants of corps in a register to be kept for that purpose.

General one by Adjutants.

which the deceased belonged, stating that the claim has been investigated and found to be just."

7.—*Doubtful cases.* "In all cases where commanding officers may be unable to satisfy themselves as to the justice of claims to the estates of the native soldiery, they will refer them for the decision and orders of Government through this (Military) Department." (*G. O. G. G. in C. 7th December,* 1827.)

(31) See Deposits, note 10.

(32) Advise, as in note 2.

(33) "To assist in defraying their funeral expenses; and that the names of all such deceased, &c. shall be struck off the rolls of companies, &c. at the expiration of every month." (*M. C. 7th May,* 1781.)

Deaths of native officers to be reported, by letter, to the Adjutant General. (*G. O. C. C. 22nd June,* 1793.)

6.—*Bills for remittance* to be granted by deputy pay-masters, on application as soon as practicable. (*G. O. G. G. in C.* 25*th November*, 1825.)

Bills for remittances.

7.—*Deposits, General Treasury.* (34)

SECTION 6.—ESTATES OF DECEASED NATIVE OFFICERS AND SEPOYS ON FOREIGN SERVICE. (*G. O. G. G.* 4*th August*, 1818.)

Estates of deceased native officers and sepoys on foreign service.

1.—"The amount of property, including arrears of pay and sale of effects, to be immediately paid to the pay-master who accompanies the troops, by the officer commanding the company, &c. or department to which the deceased belonged."

2.—"The pay-master to grant a receipt, in duplicate, for the amount paid in, to the officer from whom he receives it, a copy of which the officer is, without delay, to transmit to the general treasury at Fort William, where it will be considered as equivalent as a remittance of the property."

3.—"A duly authenticated copy of the same is, by a separate conveyance, to be forwarded by the officer, to the general treasury, to provide against the possible loss of the original first despatched." (35)

Register.

7.—"The adjutant of the corps is to keep a register of all men who may die or be killed, including, in appropriate columns, the company to which the deceased belonged, the amount of his property, the manner in which it has been disposed of, and whether or not the deceased is entitled to prize-money. It will be the duty of the officer commanding the corps to see that this register is correctly kept up, and for such purpose to take care that officers commanding companies, whether the companies are with the head-quarters of the corps, or absent from it,

(34) "All applications to the sub-treasurer, on account of the proceeds of estates, the property of deceased native soldiers, &c. deposited in the general treasury, are to be forwarded by commanding officers of corps, or heads of departments, respectively, who are to state, for the information of Government, that, having made the fullest inquiry possible into the merits of the claim to inheritance, they are satisfied that the person claiming is entitled (or otherwise, as the case may be), to receive the amount of the deposit." (*G. O. G. G. in C.* 15*th August*, 1823, *No.* 99 *of* 1823.) All applications not so transmitted will be returned "*bearing postage.*" (*G. O. G. G. in C.* 4*th March*, 1825, *No.* 72 *of* 1825.) Money is deposited in the general treasury after 12 months.

(35) 4.—"One copy of the original the officer will retain for his own security." 5.—"These receipts are to express the corps and company of the deceased person to whose property it refers, as well as the name and rank of the officer paying it in." 6.—"The pay-master is to send to the accountant to the military department, a quarterly report of money thus received, and of the receipt granted for it." The rule laid down in note 8 should be applied to native troops "*dying away from their regiments.*"

furnish to the adjutant timely notice of every casualty, and of all circumstances connected with the property of, and any information which can be procured relating to, the heir to the deceased individual."

Quarterly report.

8.—"A quarterly report, extracted from the register of all men who have died or been killed during the preceding three months, stating their company, the amount of property, the manner in which it has been disposed of, and whether the deceased person is entitled to prize-money, is, by the officer commanding the corps, to be transmitted to the Adjutant General of the Army at Fort William, a duplicate copy of which is to be forwarded, by a separate conveyance, to the same officer. The report is to be dated 1st January, 1st April, 1st July, and 1st of October, of each year." (36)

As to those dying on return from foreign service, see G. O. G. G. in C. 17th April, 1813.

SECTION 7.—ESTATES OF DECEASED EUROPEAN OFFICERS AND SOLDIERS, BOMBAY ARMY.

Intestate estates.

1.—*G. O. Government, Bombay Castle*, 30th June, 1831, (after calling the attention of commanding officers of regiments to the Acts of Parliament, and to the provisions relative to intestate estates.)

4, Geo. IV. c. 81, and Sec. 16, Articles of War.

2.—(Detailing 16th Section of the Articles of War, under 4, Geo. IV. c. 81, and 49, 50 and 51 Sections of 4, Geo. IV. c. 81.)

Act 6, Geo. IV. c. 61.

3.—Detailing the Act 6, Geo. IV. c. 61, (*as given in Section 1 of this chapter.*)

Committee.

4.—"Under these provisions the course to be pursued is as follows:"

Major, &c. and 2 Capts. Deceased dying with or away from regiment.

"Upon the death of an European commissioned officer, the Major of the regiment to which he belongs, (and whether the deceased was absent from his regiment; for example, upon the staff, or present, will make no difference,) or the other officer during the Major's duty is, with the assistance of two other officers, not under the rank of Captains, to be appointed by the officer commanding the regiment, to collect such effects as may be at hand, and after payment of the several charges specified in the Acts of Parliament, to transmit the proceeds to the Secretary in the Military Department. With respect to any effects not

Collect effects. Proceeds to Secretary Military Dept.

(36) 9.—"The Adjutant General is to furnish the superintendent of family-money with a copy of the quarterly report, by which latter officer the accounts of the deceased men whose property has been paid over to the pay-master are to be adjusted with their legal heirs."

10.—"Whenever the superintendent of family-money has established the right of any person claiming as heir to a deceased soldier, he is, through the prescribed channel of the Adjutant General, to apply for the property, in order to pay it to the claimant." (*G. O. G. G. 4th August*, 1818.)

upon the spot, they are, necessarily, either goods or chattels, landed property, or debts, owing to the deceased, (and what is about to be observed upon the latter, will of course apply to all debtors generally.) In the case of goods, chattels, and landed property, the Major, or officer doing the Major's duty, and the two Captains, are authorized to have them sold, and to transmit the net produce to the Secretary in the Military Department. In the case of debts, payment should be demanded; if made, the same should be transmitted in like manner; if refused, it will then become matter of consideration, whether a suit to enforce payment should be instituted or not, and the determination, one way or the other, must of course be governed by the circumstance of the solvency of the debtor and the nature of the evidence in support of the demand; upon an occasion of this nature, the officers in charge will place the case in the hands of the Military Secretary to Government, by whom the advice of the Company's law officers will be obtained; after which, should the determination be to prosecute, the officers will be apprized, and will pass any requisite power of attorney for the convenient prosecution of the suit."

To sell property elsewhere.

Demand payment of debts. Sue.

In cases of insolvency, apply to Military Secretary.

5.—"The proceeds thus collected in the hands of the Military Secretary will be disposed of as the Act requires; should the estate not exceed 200 Sa. Rs. payment to the parties entitled will be authorized by the Military Secretary without probate; or administration must be taken out," (if exceeding 200 Sa. Rs.)

Sums not exceeding 200 rupees paid without probate.

6.—"In the event of there being neither widow nor next of kin in this country, then it will be the duty of the officers, in charge of the estate, in transmitting proceedings to the Military Secretary to Government, to furnish him with any information they may happen to possess, to lead to the knowledge of where the widow or next of kin is to be met with."

No widow or next of kin in India.

7.—"It is to be clearly understood, that what has been said, touching deceased commissioned officers' estates, applies *mutatis mutandis* to the estates of deceased non-commissioned European officers and soldiers." (*See Section* 16, *Art.* 2.)

Applies to non-commissioned officers and soldiers.

The notes are—"That of exceeding 200 Sa. Rs., probate or administration must be taken out by the legal representatives. The statutes and legacy duties do not extend to this country. That the Act of 4, Geo. IV. c. 81, limited the power to *effects in camp and quarters*, this (6, Geo. IV. c. 61), extends that power to *all effects*. That the registrar cannot interpose, unless required or authorized so to do (*Sec.* 1, 6, *Geo. IV. c.* 61,) by any."

Remarks.—See *Section* 3 of this chapter for *schedule*, which may be applied; as well as the general rules for the committee, not at variance with this order. (Section 7.)

Here the Bombay Government recognize the Act 6, Geo. IV. c. 61, and direct the demand of all debts due to the estate. In *Bengal*, in the case of *intestates*, or no *executor* in *India*, the case goes to the registrar. (*Section* 2 *of this chapter, G. O. G. G. in C.* 31*st July*, 1823.) At *Madras*, in the case of intestacy, or no executor within the limits of the Presidency, *(paras.* 14 *and* 22 *of Section* 4 *of this chapter)* to the registrar. While at *Bombay*, the registrar is not named. The rules of the three Presidencies, with some alterations and additions, might, with advantage, be framed into one regulation for the three armies: and as officers of one establishment may have money left to him by an officer, &c. of another, it would be advantageous to have the same rules at each Presidency.

CHAPTER V.

MILITARY COURTS OF REQUESTS.

Section 1.—(European) where Troops are serving beyond Jurisdiction of Calcutta, &c. Court of Requests, for Debts not exceeding 400 Sicca Rupees.

Calcutta Court does not extend to Dum-Dum, or Barrackpore. (*Section* 57, 4, *Geo. IV. c.* 81.) 1.—"And be it enacted, that in all places where the said Company's forces now are or may be employed, or where any body of His Majesty's forces may be serving with the forces of the said Company, situated beyond the jurisdiction of the Court of Requests, established at the cities of *Calcutta, Madras,* and *Bombay,* respectively, actions of debt and any personal actions against such officers, non-commissioned officers, or soldiers, all persons licensed to act as sutlers to any corps or detachment, or at any station or cantonment, or *other persons* amenable to the provisions of this Act, (1) or *resident within the limits of a military cantonment,* (2) shall be cognizable before a Court of Requests composed of military officers, and not elsewhere; provided the value in question shall not exceed 400 sicca rupees, (3) and that the defendant was a person of the above description when the cause of action arose; which court the commanding officer of any station or cantonment is hereby authorized and empowered to convene, and the said court shall in all practicable cases consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of a Captain: and every member assisting at any such court, before any proceedings to be had before it, shall take an oath." (4)

Against officers, non-commissioned officers, and soldiers, &c.

Not exceeding 400 Sa. Rs.

Of five and not less than three officers.

(1) Not natives or native soldiers. See Sec. 63 of the Act.

(2) European shop-keepers, &c.

(3) If it exceeds 400 Sicca Rupees, plaintiff must sink the claim to that sum, which is the practice in Calcutta, and by Circular, No. 528, A. G. O. 1st May, 1829, par. 8, and it is now settled, that Europeans can sue Europeans in the provincial civil courts, under Sec. 107, 53, Geo. III. c. 155, (Sec. 4. cl. 3, A. D. 1825, Reg. XX. 30th December, 1825.)

(4) The oath laid down in this section is repealed by Sec. 126, 9, Geo. IV. c. 74, as to taking an oath upon the "*Holy Evangelists,*" by Section 37 of which they *may,* instead thereof, *be sworn according to the forms of their respective religions.* But the members *may* legally take an oath on the "*Holy Evangelists.*" The 126th Section repeals the 57th Section in favor of conscience. Where there is no objection, the usual manner is on the "*Holy Evangelists.*"

Oath by members. "I —— will duly administer justice according to the evidence, in the matter that shall be brought before me." "So help me God." (5)

Witnesses sworn. "And every witness before any such court shall be examined on oath, which such courts are hereby authorized to administer; or if natives of the *East Indies*, an oath or solemn declaration, as the circumstances of the case may require; (6) and it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the *whole*, (7) or any part thereof, shall be stopped and paid over to the creditor, out of any pay or public money (8) which may be coming to the debtor in the current or any future month; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and the goods of the debtor, if found within the limits of the Company's garrison or cantonment, to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damages; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, *or any sum not exceeding the half-pay* (9) *accruing to the debtor*, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, but be a sutler, servant, or follower, (10) he shall be

Or affirmation or declaration.

Stop whole or part.

If execution generally.

If not paid, seizure and sale of goods.

If not enough, half pay, &c.

If no public pay.

(5) Being *once* sworn is sufficient to allow the court to decide all the cases which may be brought before it. (*A. G. Letter, No.* 2264, 8*th August*, 1828.)

(6) By Section 36, 9, Geo. IV. c. 74, every *Quaker* or *Moravian* may, in *criminal* or *civil* cases, make a solemn affirmation, or declaration. "I, *A. B. do solemnly, sincerely, and truly declare and affirm*;" and *natives* of any country within the limits of the charter of the United Company, in any case, *criminal or civil*, shall, instead of taking an oath in the usual form, be permitted to make a solemn affirmation or declaration, in such manner and form as the court shall deem sufficiently binding upon the conscience; which affirmations, &c. shall have the same force as an oath, and be subject to the same penalties, as in the case of wilful and corrupt perjury. See Note 20, *Oath*.

(7) The *whole*. As the debt may be 400 Sicca Rupees, if the officer's pay and allowances were 400 rupees, the *whole* could be stopped. The term *half-pay*, after *execution* and sale of effects, show that a *distinction* is made between the cases. For, in the former instance, he retains his property, but not in the latter! not that it is usual, but a court may *legally* award the whole 400 rupees, from one month's pay, &c. The words "or *public money*" include *allowances*.

(8) Prize-money, donation, &c.

(9) See note 7.

(10) Shop-keepers are among the class of sutlers, &c. In case 1, it will be seen

arrested by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid: provided always, that from and after the time limited for the commencement of this Act, so much of 53, Geo. III. c. 155, (*charter*,) as gives to magistrates the cognizances of debts due from officers and soldiers, being (*European*) *British* subjects, to the *natives of India*, resident without the jurisdiction of the Court of Requests therein mentioned, (*Calcutta*, *&c.*) shall be, and the same is hereby repealed accordingly." (11)

Payment or imprisonment.

SECTION 2.—TO BE HELD, MONTHLY, IF NO COMPLAINTS.

By G. O. G. G. in C. No. 244 of 1824, 19th August, 1824, (confirmed by G. G. O. 23rd September, 1824.) "The courts are to be held monthly, (12) whether there be complaints or not, some convenient day before the issue of pay, and that the order for the assembly of the court be *tom-tomed* through the bazars and cantonments, at least two days before its assembling, to give due publicity as to *time and place*. If no complaints, an entry to be made on the proceedings accordingly: and the monthly return of the station to exhibit that the order has been obeyed: and for which commanding officers are responsible."

Sec. 2. To be held monthly, or oftener.

Notice tom-tomed for two days.

If no cases, an entry thereof.

SECTION 3.—GENERAL RULES FOR COURTS OF REQUESTS. (*Circular, No.* 528, *A. G. O.* 1*st May*, 1829.)

Section 3. General rules for court.

SIR,

1.—"Doubts, &c. for your information and guidance."

2.—"The decision of a Court of Requests cannot be *appealed* from to any other military court; but, its decisions are subject to *review*, as are the decisions of all inferior courts, in the Supreme Court, for any manifest injustice or illegality." (13)

Subject to review in Supreme Court.

that the Calcutta court sometimes allows of *instalments*. But the military court does not, except the defendant receives public pay.

(11) Except in cases exceeding 400 Sicca Rupees. See Note 3. *Soldiers* in H. M. service not arrested for a debt under £30, cl. 3, M. A. 1832. A Company's soldier not under 200 Sicca Rupees, Sec. 55, 4, Geo. IV. c. 81.

(12) "At least once a month, or more frequently, should it be necessary. All such courts are to be attended by a *regimental interpreter* in turn." (*G. O. G. G. in C. No.* 288 *of* 1824, 23*rd September*, 1824.)

Interpreter.

(13) "As in the case of Captain H. D. Courtayne, who on the 18th March, 1833, was sued by Messrs. Mackenzie and Lyall of the Exchange, in the Court of Requests, for a debt alleged to be due to them. The case came on a second time, for hearing, before Messrs. MacLeod and Alexander, on 25th March, 1833, when Captain C. found that Dwarkanauth Tagore, who had been subpœnaed, and whom he considered a material witness for the defence, had not attended, and requested that an *attachment* might be issued against him, and the case be postponed. The Commissioners refused to comply with his request, as well as to examine another witness who was then attending on his behalf, and decreed the case against him,

Commanding officer may point out error. 3.—"In the event of a commanding officer being aware of an error or omission in the proceedings of a Court of Requests, he may point it out, and the court may without impropriety receive any suggestion of this nature, and correct the error; but it would not be regular in him to direct the proceedings to be *revised*, because he disapproved of the decision the court had come to. Its judgment is final. A commanding officer can neither *disapprove* of its award, nor refuse to carry it into execution."

Can't revise.

Nor, refuse to execute award.

Decide claim in full or part. 4.—"The court cannot enter into a complaint beyond passing its decision on the sum sued for. It must decide, whether the claim be, or be not, substantiated, in part, or in full."

Desertion. 5.—"The court is competent to weigh the inconvenience a master is put to by the *desertion* of a servant, against the claim of such servant for wages; and it appears to be the practice to deduct half a month's or a whole month's wages, according to the case." (15)

Wages stopped.

No criminal jurisdiction. 6.—"The court, having no *criminal* jurisdiction, is not authorized to investigate cases of *maltreatment*, excepting when connected with a servant's desertion, and then only, when he sues for his wages in this court." (16)

Off set for damage to property. 7.—"It is competent for a Court of Requests to make deductions from wages, when sued for in this court, for articles proved to have been lost, or wilfully damaged, through the negligence of the complainant." (17)

If debt more than 400 Rs. may sink it to 400 Rs. 8.—"A plaintiff may bring his suit for a larger debt than 400 rupees, provided he agrees, and is willing, to limit his demand to the sum above-mentioned, and to release and quit claim to the surplus of the said debt, over and above the sum of 400 rupees." (18)

though he protested against the decision. Captain C. applied to Sir J. Franks, in *chambers* (not being *term time*), for a writ of *certiorari*, to control the proceedings of the Court of Requests, and to transfer them for *appeal* to the Supreme Court. Sir J. F. granted the writ. The Commissioners issued the order for Captain C.'s arrest, and Mr. Nicholson intimated his intention to apply for a writ of attachment against them. Captain C. was arrested by the Petty Court Bailiff. On the same day a writ of *Habeas Corpus* was obtained, commanding the *Bailiff* to produce the body of Captain C. before Sir J. F. It appearing that he was in custody of the *Petty Court Jailor*, Captain C. was discharged on the ground of deficiency of the return." (*India Gazette*, 15*th May*, 1833.)

(14) Provided the amount decreed does not exceed 400 Sicca Rupees.

(15) See case 1.

(16) See note 20, *contempts*, &c.

(17) See note 46, case 1.

(18) See note 3, *Ahom*, *Chinaman*, v. *Captain Sherriff* of the *Flora*. Claimed

9. "It has been customary to consider 15 days, or a month's warning, sufficient, previously to discharging or quitting service." Fifteen days', or month's notice.

10. "In the event of a Court of Requests erring in the mode by which it may direct its award to be carried into effect, and ordering the amount awarded against a person not in the receipt of public allowances, to be paid by *monthly instalments*, it is competent for the commanding officer to return the proceedings of the court, which will correct the mistake committed; and if the court be dissolved, to direct the trial to proceed *de novo* before *another* court, the award of the former court being null. (19) As the commanding officer has not power to act, but under the decree of the court, that decree being vitiated by the supposed error; he cannot proceed to levy the sum awarded, by the seizure and sale of the parties' goods, or to imprison the debtor." Error in award. May be pointed out to court. If dissolved. A new court.

11. "Subsistence money is to be afforded to the imprisoned debtor, by the party at whose suit he is imprisoned, and the allowance prescribed by the Court of Requests is one and half-anna per diem, to be paid in advance; and in failure of one day's allowance being paid, the debtor is to be released." (20) Subsistence to debtor 1½ anna daily.

12.—"The regulations of this Government for military courts to try actions of debt between *natives* do not admit of *imprisonment* in liquidation of the debt, but enact, that if the execution is awarded Natives not imprisoned, except execution generally is awarded and goods insufficient.

478 rupees, but deducted the odd 78 rupees, and sued for 400 rupees, rather than prosecute in the Supreme Court. (*Calcutta Ct. R. 21st March*, 1831.)

In the case of *Mackintosh, Stewart*, and *Bailie*, v. *Moore* and *Cowel*, Supreme Court, 12th January, 1830, Sir C. Grey and Ryan said, the case should have been brought in the Court of Requests, and that in such cases the judges of the Supreme Court never gave costs. *Verdict* for plaintiffs 200 rupees, *without costs*.

(19) See case 1—and where the necessary evidence may not have been received; or where, as in case 8, the party could not, at the time, produce the witnesses to prove his case.

Practice of the Calcutta Court of Requests.

(20) By the Proclamation by G. G. in C. 24 Oct., 1819, for the Calcutta court—One month's diet money shall be lodged by creditor within three days after the imprisonment, at 1½ anna per diem, and he is to continue to pay such deposit to the keeper or his deputy in advance—within the last three days of the first, and every succeeding month, during the imprisonment. If not, debtor, on certificate of jailor, or his deputy, may apply to court for discharge, which the Court of Requests will grant. Proclamation.

Imprisonment. Debt not exceeding 10 rupees, not exceeding 1 month: Imprisonment.

Ditto	50 do.	4 do.
Ditto	200 do.	8 do.
Ditto exceeding	200 do.	1 year.

generally, the debtor's effects shall be seized, and sold in liquidation, and if not sufficient, the debtor is to be imprisoned, for the space of

Table of costs, (on causes of 10 rupees, and under:)

If compromised, per rupee,	..	0	2	0
If non-suited, do.	..	0	3	0
On judgments, do.	..	0	4	0
Subpœnas, do.	..	0	4	0
Attachment or warrant in execution, do.	..	0	8	0
Postponements by the party desiring it, do.	..	0	2	0

No commission can be charged on this class of cause.

	From Sicca Rupees.				
On all causes above 10 Rs.	10 to 40	40 to 80	80 to 150	150 to 300	300 to 400
If compromised,	1—0	3—0	4—0	8—0	10—0
If non-suited,	1—8	4—0	6—0	10—0	12—0
On judgments,	2—0	6—0	8—0	16—0	20—0
Subpœnas, each,	0—4	0—8	0—8	1—0	1—0
Attachments or warrants, in execution,	0—8	1—0	1—0	2—0	2—0
Postponements,	0—4	0—8	1—0	2—0	3—0

5 p. c. commission on all causes compromised before called on for trial, and 10 p. c. on all other causes, exclusive of the above-mentioned fees.

If debtor gives up goods, &c. the imprisonment may be reduced in proportion to amount realized, in satisfaction of debt and costs, or may be allowed to give *security* to pay by *instalments*, and be discharged as to such debt and costs. But his property afterwards acquired may be taken in execution, to satisfy the debt, costs, and diet money.

Casting vote. There are four commissioners, and when equally divided, the vote of the senior commissioner present shall decide. No *casting vote* to the *military president*.

Jurisdiction. JURISDICTION. All manner of *actions*, *plaints*, *suits*, and *controversies* for any debts, dues, or demands, not exceeding 400 Sicca Rupees, as they may find to stand with *equity and good conscience*, in and for the settlement of Fort William, subject to the controul of H. M. Supreme Court at Fort William, does not extend to Dum-Dum or Barrackpore.

Practice. PRACTICE. *Personal* actions are contra-distinguished from *real* actions. The latter relating to real, or landed, or immoveable property, and generally applying to the *title* and *possession* of houses, land, &c. (Mr. (now Sir H.) Compton, 26th July, 1824.)

If A. purchase a house from B. for 400 Sicca Rupees, B. can recover. Thus if A. buys a house from B. and B. gives his acknowledgment, or B. proves the sale, but if it be contested, whether it belonged to A. or another person, that is first to be settled.

If a legal point be pending in Supreme Court. In the case of *D. Cardoza*, v. *C. L. Pinto*, cross suit, for 60 rupees, house rent. Mr. Lackersteen, a bankrupt, residing at Serampore, had a house at Calcutta, under mortgage, and gave a lease to Mr. Cardoza. The mortgagee gave notice to plaintiff that the house was mortgaged to him. The house was sold by the Sheriff,

two *or more months*, with reference to his being within or without the Company's territories, unless the debt be sooner paid; and his goods, And if goods found afterwards.

defendant bought it, and called upon plaintiff to pay the rent. *Commissioners* Mr. Dobbs and Mr. O'Hanlon decided, that the Court of Requests had no jurisdiction in the matter; the case depending on points of law, which ought to be determined in the Supreme Court; and as such, declined all interference in it." (*Calcutta Ct. R. 12th December*, 1832.)

By Attorney. Plaintiff may sue by attorney, as an indulgence, and not right. In such cases, it is usual to deposit amount of debt and costs. *Sooban Budopadia*, v. *C. Trower, Esq.* (*Calcutta Ct. R. 7th December*, 1832.) By Attorney.

Jurisdiction. Where a person derives her means of support by pension or salary from Calcutta: though she lived over the water, and beyond the jurisdiction, decreed to be on same footing as an inhabitant of Calcutta. (*Shaik Baitajee* v. *Mr. Hillary*,) Calcutta Ct. R. 18th May, 1832. Jurisdiction as to residence.

So if a man has a ware-house in *London*, and carries on trade *there*, though he sleeps in *Kent*, he is subject to the debt (£5 in London Court of Requests? 39 and 40, Geo. III. c. 104, (Exchequer Court, London, 25th January, 1833.)

So in India; having a shop or house in Calcutta, and living at Futtyghur, if trade is carried on. (*Hukeem Mehdee.)*

LIMITATION is by Statute of Limitation, (21, *Sec.* I. c. 16,) limited to six years, unless plaintiff has revived his debt by demand, or defendant has acknowledged it. So where an action was brought to recover a debt after eight years, and there was no proof of demand within the time limited by Act of Parliament, plaintiffs was non-suited. (*Thompson, Chisholm, and Oxburgh, Trustees of Messrs. Taylor, and Co.* v. *Captain Betts.*) (*Calcutta Court of Requests, before Mr. McLeod, 24th January*, 1831;) but limitation may be as to part only, and the other part decreed. (*Shaw*, v. *Anderson, K. B. in Banca, 25th January*, 1833.) Statute of limitations. Not against.

INSOLVENT not *claimable against till discharged. Jan Mahomed Khansama*, v. *H. Cook, Junior.* Suit for 59 rupees, on a note of hand. Defendant acknowledged debt, but said that since its contraction he had taken the benefit of the Insolvent Act, and had included the name and claim in the schedule of his creditors, and had a notice served on him, plaintiff. The *Commissioner* (Mr. McLeod) said that it was sufficient that the plaintiff's name was in the schedule, but the service of the notice on him must be proved. Case postponed. (*Calcutta Court of Requests, 25th March*, 1833.) So that, unless discharged by the Insolvent Court, such cases should be dismissed. Insolvent till discharged.

CONTEMPTS. Where defendant assaulted plaintiff for bringing a suit against him in a Court of Requests, plaintiff brought an action at the sessions, and defendant was fined £20. (*John Wood*, v. *Richard Wood*,) Westminster, (adjourned Sessions, 19th January, 1828.) So, before a Military Court of Requests, if a master has beaten his servant, and servant deserted, court would not deduct from his wages. If relief can't be had in this way, servant must complain against his master, and if the servant were cruelly or severely beaten, he (officer) would be suspended from, and probably lose, his commission. Contempts.

GOODS SOLD. *Delivery must be proved. Norman Grant*, v. *Roger Dias.* 15 rupees for books, and balance for engravings delivered by him to the order of defendant, which was produced, bearing on the back of it the receipt of the servant Goods sold, prove delivery.

if found at any subsequent time within the limits of the cantonment, are liable to be seized, and sold in satisfaction of the debt, under a

who received them for his master. The *Commissioner* (Mr. O'Hanlon) objected that an *order* for goods was not a sufficient *voucher* to justify the court in decreeing the amount without other proof of the *delivery*. (*Calcutta Court of Requests, 16th November*, 1829.) Plaintiff should prove the receipt by defendant. But the shortest proof is this, let defendant give a written order or memorandum, and plaintiff send a receipt for the goods containing their description, and defendant should sign it, as proof of delivery, and return it to the merchant. This is the Calcutta practice, and saves disputes.

Attachment.

ATTACHMENT is the usual form of court for non-appearance, (*Sooban Budopadia, v. C. Trower, Esq. Calcutta Court of Requests, 7th December*, 1832.) But in *Military* Courts of Requests, defendants are cast for non-attendance. So in the case of Ensign J. D. King, 13th N. I. The Commander-in-chief remarked, when charged before a General Court-martial, (one charge for non-attendance before *Court of Requests* at *Barrackpore*,) " he had by his absence from the *Civil* court to which he had been summoned, become liable to the penalty (the loss of his cause,) which the court had inflicted; he could not, therefore, be considered as subject to a second punishment for the *military* offence." (*G. O. C. C. 8th July*, 1826. *Combermere.*)

Shop-keepers' bills at distant stations.

SHOP-KEEPERS BILLS *at distant stations.* " No limitation to debts contracted *within* the cantonments, and if an action for debt not exceeding 400 sicca rupees was brought in the Supreme Court against an officer, he might object to the jurisdiction, *in whatever place the debt was contracted.* The cause is to be tried in the " Court of Requests, composed of *military* officers, *and not elsewhere.*" (*Advocate General Pearson's opinion, 1st September*, 1830.) The usual course is to swear the debt before a magistrate, and such debts are directed to be received by the court, as if the plaintiff were present. (*A. G. Letter, No.* 752, 22*nd May*, 1831. 28*th April and* 24*th July*, 1830.)

" In Calcutta, the proof is the signature of the merchant to the power of attorney: if questioned by defendant, the subscribing witness might prove it, or any person who knew his hand-writing. The magistrate's certificate would require the same proof. Either proof or admission. If the court required attendance of party, and he did not, he might be cast." In *military* courts we receive the document as sworn before the magistrate, as evidence without other proof. If defendant did not admit the debt, and thought the signature not a real one, it is very easy to send it to the magistrate, and ascertain the fact.

Magistrate's certificate. Evidence.

Oath of plaintiff and defendant.

OATH *of plaintiff or defendant.* " Seldom required in Calcutta, and never is necessary unless they give *evidence*; when, as the act requires, they must be sworn."

Interest.

INTEREST *on shop-bills not usually allowed.* " Not allowed by law, (unless at the time of selling it is agreed to, or at a future period promised, if time for payment is granted,) supposing that the seller has the option of suing (defendant being within jurisdiction) when the bill becomes due, and not paid when demanded. Three months is the general credit in Calcutta, although longer credit is frequently given by tailors, jewellers, &c. &c."

If a debtor has removed to where his creditor is precluded from seeing him, and he has demanded payment, when such debtor returns within jurisdiction, and is

written order of the commanding officer." *(To commanding officers of stations and D. J. A. G.)*

sued, the creditor is considered entitled to *a fair rate of* interest, after the expiration of the customary credit time, i. e. for the period of such absence, or the time between the expiration of such credit and his return from the place he went to, to escape payment. *Courts of Requests being greatly guided by circumstances of equity, as well as law.*" Of course a *military* court are governed by the rules of *civil* courts; and if a man breaks his WORD, a court of *conscience* should make him make amends to the injured party. "Book debts may carry *interest* in consequence of the *usage* of particular branches of trade; *or in cases of long delay under vexatious and oppressive circumstances, if a jury, in their discretion, shall think fit to allow it.*" (*Eddowes, v. Hopkins, Dougl.* 361.

PROMISSORY NOTES "bear interest, in some cases from the date of the bill or note; but, in general, from the time it ought to have been paid, together with all incidental expenses." (*Bailey on Bills*, 90, 91.) And, in regard to all other debts of this species, it is the constant practice, either on the *contract*, or in *damages*, to give interest for the detention." (*Craven, v. Tickel*, 1, *Ves. Jun.* 63.) Promissory notes.

CONTRACTS AND AGREEMENTS. "Not the practice, in the Calcutta court, to require them on stamp paper." Contracts and agreement.

MUST NOT DIVIDE DEBT. "A man must not divide his debt so as to bring it within the limits of the court. If he applies to the court for relief, he must relinquish all above 400 rupees due him at that time, if on *one* account. If *goods* to the amount of 400 rupees are sold by A. to B., at the *time* he sells a *buggy and horse*, he can sue for the value of his goods, without reference to the value of the buggy and horse." Here are two accounts. "Should he have sold 600 rupees' worth of goods on the *same day*, instead of 400, he must give up 200, i. e. he can't sue for 400, and then for 200. If there be two *promissory notes*, due at different dates, given for the horse and buggy (which may be worth 800 rupees), they can each be sued for as they become due, without prejudice to the holder." Must not divide debt.

Monthly bills are separate accounts if presented to debtor monthly, and payment enforced; but, if the creditor chooses to allow them to run up to more than 400 rupees, the loss of the overplus is his. Here, a merchant cannot divide—the account is for wines, liquors, and sundry articles. If two bills be accepted, the one for four and the other for 200 rupees, on such running account, it is but one account. *But he must sue in the Supreme Court; the other court is for the recovery of small debts!*

MINORS (*under* 21 *years*) fathers answerable; (*Messrs. McFarlane and Co. v. J. Burroughs, junior.* (*Calcutta Court of Requests, before Mr. O'Hanlon, 19th December*, 1832,) or guardians, &c. "*Moosulmans*, until the expiration of 16th year, unless symptoms of puberty sooner." (Macnaghter., p. 62.) *Hindoos*, until after 16 years, (in *Bengal*, end of 15 years,) Macnaghten, vol. I. 103. Minors.

WIFE AND HUSBAND. *Must* sue the husband (unless living in adultery with another, and not merely separated). The wife is not, in law, answerable for her husband's debts, unless she had agreed to take them on herself. (*West, v. Wade, K. B. C. J.* (*Abbott*,) *17th October*, 1822.) Wife and husband.

In the case *Shaik Battajee, v. Mrs. Hillary, Calcutta Court of Requests, 18th May*, 1832. "When defendant had signed a bond in her husband's life-time, he

Section 4. SECTION 4.—ORDER AGAINST CREDIT TO NON-COMMISSIONED OFFICERS AND SOLDIERS. (*G. O. C. C. 5th July*, 1830.)

Nounlimited credit. 1.—"It has been represented to the Commander-in-chief, that inconvenience has resulted from European and native soldiers being allowed *unlimited credit* in the sudder and other bazars of stations, and much individual suffering caused by sutlers and petty dealers' enticing men to run into debt, under the expectation that they can compel payment by appealing to a Military Court of Requests."

No credit except in regimental bazars. 2.—"In order to obviate those evils, it is directed, that *no credit* shall be given to non-commissioned officers (21) and soldiers by dealers in military bazars, with the exception of their *regimental bazars*."

being too ill to sign. The *Commissioner* over-ruled the objection, as defendant by signing the bond had prevented plaintiff from using his means to recover his rights from her husband during his life-time; which he could have done if he had not been satisfied with the *responsibility* she had *taken upon herself*."

Compromise. COMPROMISE BETTER THAN NON-SUIT. (*Carrapiet Jacob, v. A. C. Gasper, before Mr. McLeod, Calcutta, 17th February*, 1832.) The commission on *compromise* less.

Sitting days. SITTING DAYS, Mondays, Wednesdays, and Fridays, 9 A. M. 1st April to 1st October, and at 10 o'clock rest of the year.

Summonses SUMMONSES returnable on the above days.

Money paid into court. Receipt. MONEY PAID INTO COURT must obtain a *receipt*, or not deemed a payment into court.

Decrees. DECREES.—"Straw or matted houses are, in Calcutta, sold by the court, in satisfaction of decrees; but not *land* or *pukha houses*."

Remarks. REMARKS. I would submit, as the *Military* Courts of Requests have been established for nearly 10 years, under the Act 4, Geo. IV. c. 81, S. 57, and though even a Sepoy, &c. are not triable by court-martial for false complaints before magistrates, (*A. G. Letter, Circular No.* 2736, *26th September*, 1828,) and consequently plaintiffs *non-suited* by a Court of Requests are not triable on *such grounds*, (though a servant, discharged, who gave a malicious and false report of his master's cruelty, &c. which deprived him of getting another servant, has been tried,) still I humbly recommend that, in cases of a vexatious and frivolous nature, where a servant has been non-suited, and the claim was groundless, that some *fine* should be levied equal to from one to three months' wages; the amount to be carried towards the improvement or repair of the roads, &c. in cantonments.

And I further recommend, that *residence*, without *registry*, should make a party amenable. That on a Court of Requests, pronouncing the transactions of any dealer to be glaringly dishonest, he be turned out of the bazar he belonged to. True, the *European* officer may sue a *native*, in the *native* court, but where the *European* court has decreed part as a just due, he could not claim in the *native* court, for the *debt or damage* due. It would be a great advantage if there were but *one court*, or, for *native* cases, two native officers as assessors, might be added to the *European* court, *but only for such native* cases. The native court should be allowed to take cognizance of debts to 400 rupees, in the provinces.

(21) This does not apply to staff-sergeants of public departments, who have no

3.—"It is not intended by this order to prevent the soldiers of any regiment from *dealing* with the sutlers in the sudder and other bazars; but to limit such transactions to *bonâ fide* ready-money purchases: credit, to the amount specified in the regulations, (22) being sanctioned in the bazar, only, of the regiment to which the individual belongs." May buy in other bazars, with cash.

4.—"It appears to the Commander-in-chief, that the best mode of giving effect to this order, will be to *cry down the credit of regiments*, as is the custom of the British army." (23) To cry down credit.

SECTION 5.—NATIVE COURT OF REQUESTS.

Section 5.

Section 22, Reg. XX, A. D. 1810.

"Actions of debt and all personal actions against officers, soldiers, retainers of the description mentioned in Section 2, of this regulation, (24) persons registered as attached to the sudder (25) bazars of corps, Actions of debt against native officers, soldiers, and camp followers.

connexion with any regimental bazar in particular, and naturally look for their supplies to the sudder or station bazar. Nor, to staff-sergeants of native regiments, who must usually resort to the sudder, or to the bazar of some European regiment, for many of the articles which they require. All such persons may have the usual credit, from month to month, in any bazar; and debts due from them may be brought before the periodical Courts of Requests, which will enforce payment when necessary. (*G. O. C. C. 2nd July*, 1833.)

(22) G. O. G. G. in C. 15th January, 1811, allows of credit for daily rations and grain for officers' cattle, payable from the issue of pay for the month, for which credit is given.

(23) Article 3, King's Articles of War, 1832. In the Sirhind division, grounded on the G. O. C. C. 5th July, 1830, Division orders were issued, directing no credit to be given to any non-commissioned officer or soldier, except in their own bazar, nor to those receiving public pay, nor to officers' servants, except in their own regiment, (*and if no regimental bazar, then to the extent of regimental credit in another bazar.*) But, if otherwise, buneeahs, &c. give credit, or lend money to the above persons, or if buneeahs, &c. in the town, or in the sudder or other bazar, than their own (*except as above*), their claims are to be thrown out. Every corps, arriving in the division, to lay down the credit of the regiment, by the commanding officer sending to the civil authorities notice of his arrival, and proclamations were sent to the civil authorities: commanding officers of regiments were requested to see that debts were settled in their regiment, and before claimant comes to the Court of Requests, plaintiff is to demand payment, and if not regimentally settled, to come to the court.

(24) "All receiving public pay, whether as lascars, magazine men, kalassies attached to magazines, or any other department or establishment, native doctors, writers, bihishtees, puckallies, syces, grass-cutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, (if borne on the fixed establishment.)

(25) By G. O. G. G. in C. 27th May, 1824, paragraph 4, where both parties are resident in the sudder bazar, the executive commissariat officer is to recommend a settlement by a *punchaet*, the decision of which court of arbitration to be

or menial servants of officers, shall be cognizable before a military court, and not elsewhere; provided the value in question does not exceed Sicca Rupees 200, (26) and the defendant was a person of the description above-mentioned, when the cause of action arose. Such courts shall be composed of *native* officers, with an *European* officer to superintend and record the proceedings, and shall, in all practicable cases, consist of five, and in no instance of less than three, members, one of whom shall preside. Such courts shall be convened monthly (27)

Five or three members.

upheld by him; except in cases of corruption or partiality; in which case, or if either of the parties object to submit their claims to a *punchaet*, the case must be settled under existing regulations and orders." Paragraph 5. "To be explained that they may appeal by petition to the commanding officer through the Brigade-Major, (or station staff,) if they feel themselves aggrieved by the award. Frivolous and vexatious appeals against the commissariat officer, (which relate to *punishments* awarded by him,) to be punished by trial.

The commissariat officer should send to the native court of requests a list of cases which are to be submitted to it from his bazar, to show that, in the first instance, the claimants applied to him, and the cases could not be adjusted by him.

(26) G. O. V. P. C. No. 175 of 1832, 29th October, 1832. "With reference to Government G. O. 16th August, 1822, and 11th March, 1825, No. 86, in which the cognizance of military courts, to be convened under the provisions of Section 22, Regulation XX. of 1810, is extended over claims of the described nature, to any amount, against *native* officers and soldiers, and in certain specified cases." (See Note) 241. "not being" (*European*) British subjects, attached to any portion of the army stationed or serving beyond the British territories," (which would include the case of *foreign service.)* The V. P. C. is pleased to lay down the following rules for future guidance upon all occasions of the assembly of courts so empowered.

2.—"In all cases where the claim may be for an amount exceeding 1000 (*sicca*) rupees, the court is invariably to be composed of *European* officers, of whom the President shall not be under the rank of a field officer; and the proceedings shall be conducted by a Deputy Judge Advocate General, or, in his unavoidable absence, by some competent officer appointed to officiate as J. A. to the court."

3.—"In all cases in which the claim made for an amount exceeding 200 "(sicca)" rupees, but not exceeding 1000 "(sicca)" rupees, the court will be composed of *native* officers, as heretofore, with the superintending *European* officer, who is not to be under the rank of Captain."

4.—In all other cases, the court will be composed of *native* officers, as heretofore, with a superintending *European* officer, who is not to be of less than five years' standing as a commissioned officer in the service." (G. O. C. C. 25th June, 1832.) No subaltern officer shall be appointed a member, or superintending officer of a Court of Requests, until six years after his first arrival in India as a Cadet, unless a sufficient number of that standing cannot conveniently be procured; and young officers under such standing, are to be directed to attend such courts." (See *Remark*, Note 33.)

(27) "Or more frequently if required." See, Note 12.

Five or three members.

Whole or any part stopped and paid to creditor.

Goods seized.

by the commanding officers of corps (28) and stations, and shall be holden on some convenient day before the issue of pay for each month, (29) and it shall be competent to such courts, upon finding any debt or damage due, either to award execution generally, (30) or to direct, as they shall see fit, that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor, either in the current or any future month. Where the execution is awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the limits of the garrison, cantonment, or military bazar, under a written order of the commanding officer, grounded upon the judgment of the court; and if sufficient goods are not found within the limits, the debtor shall be arrested by like order of the commanding officer, and imprisoned in some convenient place of confinement, (31) within the limits of the garrison, cantonment, or military bazar, for the space of two months, (32) unless the debt be sooner paid: and his goods, if found within (33) the limits, at any

(28) Only when detached as a separate corps, Sec. 23.

(29) See *Section* 2. Notice to bazar people, and whether complaints or not.

(30) In cases where defendant does not receive *public* pay.

(31) The line quarter-guards; or rear-guards, if full.

(32) Sec. 3, par. 12. Should be, if beyond the British territories, two months, for 200 rupees, and three months, for 300 rupees, and so on, see Note 33, but the limit in Note 20 is a year. *Subsistence.*—See Note 20.

(33) In modification of this Section, G. O. G. G. in C. No. 173 of 1828, 8th August, 1828. Direct. 1.—That, "whenever an award of a Court of Requests against a defendant, being a *native*, decrees a sum beyond the extent of the property which such defendant possesses within the reach of *military* authority, but not exceeding 200 (sicca) rupees, it shall be competent to the judge of any zillah or city, to give effect to such award, by levying the amount or a portion of it, from any of the defendant's property, which may be pointed out within his jurisdiction, on being furnished with a copy of the award, and a *certificate* from the commanding officer of the district, of the extent of the amount unrealized." (Reg. V. A. D. 1828, 29th August, 1828: application shall be made within three months, from the date of the award. Sale as in execution of *decrees.*)

2.—"In all places beyond the Company's territories, where Courts of Requests are competent to take cognizance of actions for debt, without restriction as to the amount, whenever *imprisonment* is awarded, in consequence of unsatisfied claims, the courts are empowered to award imprisonment in proportion to the debt, taking as a guide the existing regulations, applicable to the Company's provinces, which admit awards to the extent of 200 sicca rupees, and imprisonment to the extent of two months; and courts so situated, are to be considered competent to discharge the debtor, in cases of established *insolvency*, taking engagements for instalments, or other security, in such form as the court may approve."

subsequent time, shall be liable to be seized and sold in satisfaction of the debt, under a written order of the commanding officer." (34)

Section 6. SECTION 6.—NO PROCESS OF ARREST BEFORE JUDGMENT BY CIVIL COURT, UNLESS DEBT FOR MORE THAN 200 RUPEES; OR DEFENDANT NOT REGISTERED.

No process of arrest by civil court, unless more than 200 rupees, or defendant not registered.

Section 24.—"No process of arrest before judgment shall issue from any civil court in any action against a person residing or carrying on any trade or occupation, relating to the service or supply of the troops at any house, shop, or fixed places within the precincts of a garrison, cantonment, or military bazar, unless it be averred in the plaint that the cause of action exceeds Sicca Rupees 200, or that the defendant, though resident or carrying on such trade or occupation within the military limits, is not registered, or that, though registered, he has not within the space of three months preceding, truly and *bonâ fide*, exercised the occupation in respect of which he is registered within the limits. In all cases where such averment shall be made,

Remark. The principle of par. 1 should be extended to any amount, (under the G. O. in Note 26, par. 3, beyond the Company's territories: *for, it is clear, that a defendant (Gomashta, &c.) at Loodianah, &c. might have an award against him for* 5000 *rupees, and now, the judge could not seize and sell more than* 200 *rupees worth of property*: though defendant might have property at *Umbullah*, &c. (*belonging to the Company*) worth 10,000 rupees: so that the *military* court's decree would be confined to property at Loodianah, and the commanding officer of the district only recover 200 rupees more elsewhere. It is true the civil court would reach, his debt being beyond 200 rupees; but in the mean time the property may be made away with.

(34) G. O. G. G. 27th January, 1820, Provisions of Reg. XX. A. D. 1810, extended to the body-guard lines at Ballygunj.

A. G. Circular, 6th October, 1820, *Christian* traders or shop-keepers residing within the limits of cantonments, subject to the jurisdiction of Courts of Requests, in all cases of petty debts.

By G. O. C. C. 6th July, 1802. "Drummers, fifers, and soldiers professing the *Christian religion*, whether born in *Europe* or in *India*, are tried, on any *military* crime, by courts martial composed of *European* commissioned officers only." But *half-castes, drummers*, &c. are not amenable to the Act 4, Geo. IV. c. 81, (see Sec. 63,) and therefore not to Section 57. *Half-castes* can sue, as *natives*, in the civil courts. By Sec. 121 of 53, Geo. III. c. 155, natives of India, not born of European parents, are not transportable as Europeans. Upon the principle of the G. O. C. C. 6th July, 1802, half-caste drummers should be sued before the European court for not more than 200 rupees, and half-castes, (*not soldiers*,) before the native Court of Requests. Under Sec. 22, Reg. XX. A. D. 1810, *European* officers sat on the court when *Europeans* were concerned. As No. 122 of 1824, G. O. G. G. in C. 29th April, 1824, (C. D. L. 29th October, 1823,) declared the Act 4, Geo. IV. c. 81, to apply only to Europeans; of course no half-caste could be sued for 400 rupees.

the judge issuing the process shall indorse upon it, as the case may be, '*cause of action above Sicca Rupees* 200,' or '*defendant not registered,*' or '*defendant not entitled to privilege of registry,*' and shall sign the indorsement. All processes so indorsed shall, if the defendant be within the limits of the garrison, cantonment, or military bazar, be delivered, in the first instance, to the commanding officer, and be executed through him as in other cases; but, if the defendant be found without the limits of the garrison, &c. &c., he may be arrested by the *civil* officer on process so indorsed; and in all cases of such arrest, whether made within or without the limits, if at the trial the plaintiff shall not prove, according to the purport of the indorsement, either that the cause of action exceeds Sa. Rs. 200, or that the defendant, though resident or carrying on such trade or occupation as above-mentioned within the military limits, was not registered, or that though registered, he had not during the space of three months preceding, truly and *bonâ fide* exercised the trade or occupation in respect of which he is registered within the limits, he shall be non-suited with costs." (*See the whole of Reg. XX. A. D.* 1810, *at Sec.* 18, *chapter* I.)

Indorsement by magistrate.

Plaintiff non-suited if fails to prove averment.

SECTION 7.—FORM OF PROCEEDINGS OF THE EUROPEAN COURT OF REQUESTS.

Sectio 7.

Formation of court.

An European Court of Requests, held at Kurnal, by order of——— commanding.

(*President.*)

———, Field Officer. (35)

(*Members.*)

Captain ———, Captain ———.

Lieut. ———, Lieut. ———. (36)

Interpreter ———. (37) The Adjutant of the week attends.

The court met this day at 10 o'clock, agreeably to station orders of ——— date. President and Members all present. President, Members, and interpreter sworn. (38)

(35) "The commander-in-chief (in 1830) desired that a field officer, in all practicable cases, should be President."

By assembling on the 20th of a month, the court come on the pay, &c.; and deductions can be made out of that issue.

(36) In practicable cases, and of not less than six years' standing.

(37) G. O. G. G. in C. 23rd September, 1824.

(38) It is a good practice to receive the claims and adjourn for two days, to give notice and to summon witnesses, otherwise an officer may be out shooting, &c. The late Adjutant General directed, by order of the Commander-in-chief, that all claims should be made in *open court*: and not registered by a staff officer.

Register of cases. 1.—Receive and register claims thus (**in a register) kept for** that purpose.

Claims.	**Awards.**
A., plaintiff, claims of B. 400 rupees, for rent, or goods sold, &c. If credit given contrary to orders, see *Section* 4, and Note 23: (39)	**Award for the plaintiff** in full; **or subject to deductions by a set** off, &c. **&c. as the case may** be (entered at next meeting, unless parties are present).

Adjourn. And so with other cases. Adjourn—till ——— day.

Kurnal ———. The court re-assembled, agreeably to adjournment, this —— day of ———, at —— o'clock.

Re-assembly.

Plaintiff and defendant present. 3.—Plaintiff and defendant, (40) present, neither *sworn*, unless they give evidence, (*see Note* 20, *Oath*.) If witness objects to swear, see Note 6. A friend might appear for either party.

Rules. Instalments. 4.—With regard to the general rules, see Section 3. No *instalments*, except in the case of those receiving *public pay*, see Note 10.

Plaintiff not before asked for his debt. 5.—If plaintiff has not demanded his debt from defendant, he should be made to do so; if refused payment, then to come to the court. (41)

Shop-bills. 6.—As to *shop-bills*, from distant stations, see Note 20.

Jurisdiction. 7.—*Jurisdiction*, see Note 20. The plaintiff may be any person, not the subject of an enemy to our Government.

Claim admitted. 8.—Claim admitted, and money paid in court—record the same.

Not admitted. 9.—Claim not admitted, and no witness or witnesses—must swear plaintiff and defendant: unless the claim be proved by a writing, only requiring proof of hand-writing. Thus a promissory note from A to B, for 400 rupees. No proof of payment offered, prove A's handwriting by C.

Claim before rejected. 10.—Claim before rejected on the merits of the case, and no fresh evidence to disprove the justness of the decision, dismiss the suit. (42)

Party on duty. Postpone. 11.—Parties on duty, and who cannot attend, should certify by the adjutant of their regiment, the fact. And the court should postpone the case.

Evidence not recorded. 12.—Evidence need not be taken down: but the nature of the claim: (except in certain cases) the proceedings are summary.

(39) Sepoys may lend money, under G. O. C. C. 1st February, 1821, to bazar or townspeople: but not to their *comrades*." So with *European* soldiers.

(40) If *sick*, must send *medical* certificate.

(41) They frequently have never demanded payment: until they have done so, their claim should not be received, as it brings an officer unnecessarily before the court.

(42) At Kurnal an alphabetical list of plaintiffs and defendants is kept, to find out such a fact as the rejection before.

13.—Award of payment, by order on pay-master of the division, &c. (43) Award by order on pay-master.

14.—There being no more cases, adjourn *sine die*. The president and interpreter sign. No more cases, adjourn *sine die*.

15.—Re-assembly in the cases stated in par. 10, SECTION 3. To correct errors. Re-assembly.

16.—If no complaints, to make an entry accordingly, and to be inserted in the station monthly return. No complaints.

17.—FOR PRACTICE, consult Note 20, and the *cases*. Practice.

18.—*Offsets*. Deductions are made in certain cases. If a *native* sues defendant, and defendant finds after the award, he had paid part before, he may have a re-hearing. Sue plaintiff in the *native* court, the more regular course; as in Calcutta, defendant sues plaintiff; but in our *European* court he could not sue plaintiff, being a native. If an *European*, in the *European* court. Thus, in the case of *Samuel Smith and Co.* v. *Lieutenant-Colonel Brown*, (before Mr. Commissioner McLeod, Calcutta Court of Requests, 23rd January, 1832.) Offsets. May recove amt.overpaid

Where defendant was going to England, and said that he had received a letter from plaintiffs stating, that they had no claim against him, (which they denied and produced their letter-book and dâk-book to prove the demand of payment; the defendant's offering to swear to

(43) AWARDS. Station ———, date ———.

SIR,

Please to pay to A, commanding —— regiment, the sum of ——— rupees, and deduct the same from the pay and allowances of B; being the amount of an award decreed by the Court of Requests, against the said B.

To E. (*Signed*) C. President.
Deputy Pay-Master, Meerut. D. Commanding Station.

N. B. If the party belongs to H. M. service, then address the pay-master of the regiment. If he belongs to the staff, then to the M. B. or station staff, or if to no corps. If a staff serjeant, then to the officer in charge of such department.

The *deduction* to be from one or more months, as the court may direct, by *instalments* or otherwise. It will save trouble if the court direct as follows; (either from particular months, or 1.—" *By instalments at* ——— *rupees per month, not exceeding the half* (*or more*) *of his pay and allowances* (if *small*), though the court might legally deduct the *whole*, (see Note 7,) *from the first issue of pay, or from the following months, if there be any existing public demands against B.* This saves the court the trouble of calculating what pay, &c. is not subject to deductions; as orders are sometimes returned, the pay, &c. having been deducted. No *private* orders on a pay-master will prevent payment under the *court's order*. The commanding officers of corps, &c. pay plaintiffs and take receipts, which are given to defendant. The AWARDS not settled in court are published in orders, but not those rejected.

the fact was not admitted, though the letter would have been conclusive,) which not being produced, case decreed against him, but he was told that he could send a power of attorney to any of his friends to sue plaintiffs for the amount; if he afterwards found his proof.

Re-hearing. 19.—*Re-hearing.* Plaintiff nonsuited. See cases 1 and 8.

Agent. 20.—*Agent* A—The agent of B—Sue B. See Note 49.

Minor. 21.—*Minor,* sue parent or guardian.

Wife. 22.—*Wife,* sue husband. Case 12.

23.—*Widow,* sue her. She is answerable for husband's debts, if she promises to pay. See the case of *Mrs. Hillary,* &c. *ante,* and Note 51, case 2.

24.—No *dustooree.* See Note 49.

25.—House or Bungalow burnt by *accident,* no action, unless agreement to pay for such damage.

If by *design* burnt, must prosecute, criminally, the person or persons committing the act.

SECTION 8.—NATIVE COURT OF REQUESTS.

Formation of court.

President.

Subadar ————, ——— Regiment.

(*Members.*)

Subadar ———, — Regt. Subadar ————, — Regt.

Jemadar ———, — Regt. Jemadar ————, — Regt. (44)

Superintending Officer, Captain ————, — Regiment. (45)

The court is not sworn, nor are the witnesses. There should be an interpreter to this court.

If out of the Company's territories, see Note 26.

Commanding officers of corps, &c. see the money paid and take receipts, as in *Note* 43 (last part).

If no complaints. If no complaints, enter the fact. It is also entered in the station monthly return.

Practice. The practice in this court only differs from the European court in two points. The not swearing, and the account being 200 instead of 400 Sicca Rupees. But on the same principle claims above 200 rupees, if plaintiff sinks them to 200 Rupees.

No credit or money lent. No credit except in their own bazars, unless they have no proper bazar to go, and then for same period. Credit for August paid out of August's pay.

(44) See SECTIONS 3 to 7. Partly *Moosulmans* and partly *Hindoos,* though if taken by a rosta, no one can object to their being all of one caste.

(45) Officer of not less than six years' standing. See Note 26.

Sepoys may lend money to townspeople, or buneeahs; but not to comrades: but, in cases of a marriage, or festivals, if money be lent without the sanction of the commanding officer of the troop, or company, they may be claimed: however, whenever the sanction is given, it should be by countersigning the receipt given to the lender; and the purpose should be stated. Exception. To the Rule.

Prostitutes. Cases of their claims for nightly hire, not *legal*: prostitution being contrary to *morality*, which is part of the law of the land. If a female is living in adultery or prostitution, away from her husband, parents or friends, the person under whose protection she is living, is bound to subsist and support her, as, though the act is morally improper, every one is obliged to support those under their protection, in absolute necessaries, as a man must his bastard child, though the produce of an illegal connexion. But the wages of a kept mistress cannot be decided by a Court of Requests, unless as a servant, or on a promise to pay so much money to her, divested of such illicit import. The case, then, is a simple agreement to pay so much money.

Regimental debts should, in either court, have a preference to other debts, i. e. bazar expenses and servants' wages.

Counterclaim. If A, (*native*) sues B in the *European* court, B may have his *counterclaim* as an offset. If B owes A for a horse, 400 Sicca Rupees, and subsequently, B contracts with A and gives 400 rupees to build a stable, and he does not build it, and A sues B for 400 rupees, the court might make the offset, and balance the account. For were B cast in the *European* court, he could not sue A for 400 rupees. He must lose 200 rupees (in the provinces). Therefore, equitably, the offset to square accounts, ought to be allowed. A may sue B to gain these 200 rupees. It is not an action against A: therefore, the court should protect B as much as *equity* can do so.

Section 9.—Wages.

Case 1.—Wages. *Muckoo Bearer*, v. *Thomas Palmer*. "To recover a month's salary, eight rupees. Plaintiff had been non-suited by Mr. Dobbs, on the 18th February, but being dissatisfied, took out a second summons, before Mr. McLeod, who finding it to be an *appeal* against Mr. Dobbs, sent for Mr. D. and vacated the chair to him. Defendant did not deny the sum due, but contended that as plaintiff had absconded from his service, had not made any subsequent application (proved), that he had only been a month in his service, and that his wages were forfeited by desertion. Defendant said, he had severely scolded plaintiff for misconduct, but had not beaten him. A non-suit was entered, the commissioner telling the defendant that his servant had only Case 1. Wages. Appeal.

forfeited *half a month's wages* by absconding from his service." (*Calcutta Court of Requests, 4th March*, 1831.) (46)

Wages. (46) Case 1.—*Saddo Ram, Sirdar bearer,* v. *D. Nuthall,* Sicca Rupees 16, 14 *annas, wages.*

Defendant declined paying, because the plaintiff had left his service without warning, or giving a substitute, and had taken *two keys;* further that the plaintiff had been sick for some days, during which period defendant had been obliged to hire a substitute for two rupees. The commissioner (*Mr. McLeod*) Sickness no off-set. said defendant could not deduct a servant's wages for *sickness*, it being a visitation of God, and not plaintiff's fault. It appeared, plaintiff had given 10 days warning, but not a month as per his agreement, which agreement plaintiff denied, and said, it was never signed by him. It was further proved that plaintiff had left the two keys in his cookroom, and the mate bearer, (the witness) had given them to the Khidmutgar; who took them to Mr. N. who told him to put them again where they were found.

Mr. N. said, he refused the keys, because the Sirdar-bearer had charge of his clothes, and on his absconding, he had not counted over his clothes to Mr. N.

The commissioner said, "defendant might have taken the keys, and then if any of his clothes were missing, have made the plaintiff accountable for them; as it Off-set. was, defendant could deduct for the keys." *Decree* 10 rupees. (*Calcutta Court of Requests, 30th November*, 1832.)

2.—"In the case of *Gungaram, Molly,* v. J. Gordon, (suit 62, 11, 2, for *wages*.") (*Calcutta Court of Requests, 7th January*, 1833.)

Plaintiff was sent to superintend a garden-ground at some distance, but he did no work. Mr. McLeod, commissioner, held, that in that case the man ought to have been discharged instantly, and decreed the case.

Wages. 3.—*J. Padmore,* v. Captain Hatchwood, defendant, commander of the Barque *Prinsep.* Plaintiff sued for Sa. Rs. 33, 5, 4; 28 days' wages, at 40 rupees a month, as a batta lascar.

"Defendant (who appeared by proxy) admitted the claim, but said plaintiff had been ordered to stay on board one night, and went on shore when the decks were covered with chests of indigo. Plaintiff was usually allowed to go on shore. (There are no articles of agreement in the country-service.) The commissioner said, he concluded plaintiff thought he was not bound to remain on board, as he had been all along allowed to go on shore, and decreed the full amount; and said, if defendant meant to proceed against him for *desertion*, he must apply to the Police, as he could not interfere." (*Calcutta Court of Requests, 3rd February*, 1832.)

Case 4. Wages. 4.—(*Sunday.*) *Miezon Khidmutgar,* v. W. B. Plaintiff sought to recover three and a half months' wages. Defendant admitted a balance of two months and a few days, and that the plaintiff had suddenly quitted his service, without warning. On *Sunday*, plaintiff demanded payment of the arrears, which the master referred to the evening.

No payment on Sunday legal. "In the evening, plaintiff disrespectfully demanded an immediate settlement, which defendant, to secure the legality of the payment, and to punish his insolence, refused to grant till the following day (*Monday*). On this plaintiff instantly quitted, and brought his suit. *Commissioner* (Brietzcke) *decreed* the amount admitted by defendant, on the ground that the arrear of wages due to plaintiff was unreason-

Case 2.—BAZAR EXPENSES. *Omur Khansama,* v. *Lieutenant C. Davidson.* Case 2. Bazar expenses.

"Plaintiff sued defendant on a warrant for 56 rupees for the bazar outlays of *October* last. It was asserted by defendant, and admitted by plaintiff, that *November's* account had been paid, with the difference of 13 rupees, which plaintiff said was still due on account of that month. On defendant denying the debt on oath *in toto,* the commissioner (*Mr. P. O'Hanlon*) dismissed the case, although the plaintiff offered to produce witnesses to prove his claim, if the case were postponed for that purpose." (*Calcutta Court of Requests, 5th November,* 1832.) Paid for Nov. & claim for October.

Case 3.—NOTE-OF-HAND, OR PROMISSORY NOTE. Case 3.

N. sued M. for the recovery of an amount due on certain promissory notes. Defendant acknowledged the debt, and stated his readiness to pay it by instalments at the rate of 50 rupees a month, an offer of compromise he had made to plaintiff, which he refused, and required defendant to pay 100 rupees a month. Defendant in justice to his Note-of-hand or promissory note.

ably long, and that therefore, he committed no *laches* (*negligence,* &c.) which could render him liable to forfeiture in suddenly quitting Mr. B.'s service." (*Calcutta Court of Requests, March,* 1830.) Long arrears improper.

5.—*Pran bearer,* v. *T. Bason;* six rupees, for one month's wages. Case 5.

Defendant demurred paying plaintiff, because some time previous to this action, defendant's house had been robbed, when plaintiff was taken into custody by the Police on suspicion: at that time nine rupees were due him. Plaintiff was released, nothing being proved against him, and declined returning back to the service, on which defendant paid him three rupees, and deducted the rest for leaving his service without warning, or giving a substitute. Wages.

The Commissioner (*Mr. P. O'Hanlon*) said that after the man had been unjustly confined, on an unfounded suspicion against his character for theft, most likely he did not wish to enter the same service again; and this case was different from the common cases of servants quitting their masters without warning or substitute. *Case decreed.* (*Calcutta Court of Requests, 5th November,* 1832.) No off-set.

6.—At the Police, at the Cape of Good Hope, Col. Kenny hired *Hairbottle,* his wife, and daughter. The defendants had agreed to serve plaintiff for Rds. 82 per mensem, and were therefore considered as serving from *month to month.* The fact of desertion being proved, the defendants were adjudged to have forfeited Rds. 82, being one month's wages. (*South African Advertiser, 28th July,* 1830.) Case 6. Wages. Month to month.

NOTE.—By par. 5, Circular, No. 528, A. G. O. 1st May, 1829, half, or a whole month's wages deducted for desertion, according to the case. At *Barrackpore,* a month's notice is usual before *discharging* or *quitting* service: therefore, if a servant, there, had been deprived of service for a month, he should equitably get a month's wages, and the master be allowed an off-set to same extent if so long without a servant: unless there be an agreement in writing requiring a month's notice, either party should get a month allowed, as is usual in England. Note.

other creditors could not pay so heavy a monthly instalment, and appealed to the commissioner to be allowed by him to liquidate the debt in the manner he at first proposed to plaintiff.

No instalments without consent of plaintiff.

Mr. Commissioner McLeod asked plaintiff, if he would agree to the proposal, but he refused now to accept any portion short of the whole demand. The *Commissioner* said, when a debt is decreed upon a promissory note, the court could not without the consent of plaintiff grant further time for the payment. If the debt was one of an open account, the case might be otherwise; but, in the present instance, further time would not be granted. Defendant begged to be allowed only two months: but the Commissioner reiterated his award, *Decreed.* (*Calcutta Court of Requests, 2nd March,* 1831.) (47)

Case 4. Contracts.

Case 4.—Contracts. *Jamiesons and Co.* v. *Cumbocurrum.*

"The defendant was sued by plaintiffs for the recovery of sicca rupees 200. Defendant, a dealer in cloths, purchased of the plaintiff, merchants and agents, nine packages of piece goods, which were to be equal to a muster they shewed him; and he, at the time of the sale, entered into a *contract* with them to the above effect, and, to bind the *bargain,* granted them an *order* for sicca rupees 200, as *earnest money.* Defendant subsequently went to the plaintiffs for the purpose of clearing out his purchases, but, on examining the packages, discovered that the goods did not accord with the *muster*, and secondly, that out of the nine packages, three were damaged, in consequence of which he refused to abide by the contract."

Earnest money.

Mr. Robertson, assistant to plaintiffs, stated, "that defendant complained of the goods not according with the muster before he had seen them; the plaintiffs had since had the goods surveyed by two gentlemen, whose *certificates* they held, and they pronounced them to be equal to the muster shown the defendant. With respect to the three packages being damaged, Mr. R. could not speak, as he had not seen them."

Interest.

(47) "The holder of a bill of exchange, or of a promissory note, is entitled to recover the money payable upon it with interest." (*Bailey on Bills*, 90, 91, *Blaney*, v. *Hendricks*, *Bl. Rep.* 761, *Burn*, 119, *Auriol*, v. *Thomas*, 2 *Term Rep.* 52,) "In some cases from the date of the bill or note," (*Bailey on Bills* 91;) but in general from the time at which it ought to have been regularly paid," (*Robinson*, v. *Bland*, *Burr. Rep.* 1077, together with all incidental expenses occasioned by non-acceptance or non-payment." (*Bailey on Bills*, 91, *Auriol*, v. *Thomas*, 2 *Term Rep.* 52.) "And in regard to all other debts of this species, it is the constant practice, either on the contract, or in damages, to give interest for the detention." (*Craven*, v. *Tickel*, 1 *Ves. jun.* 63.)

The *Commissioner* (Mr. McLeod) observed, that it would be necessary to have the two gentlemen who surveyed the goods, put on their oath, to speak to the state of the packages when they examined them; they not being in court, the case was postponed for five days for their attendance. (*Calcutta Court of Requests, 2nd March,* 1832.) (48) Postponed.

(48) "*Action in the case* lies, for not delivering goods upon promise, on demand; this is by express *assumpsit*; an *implied assumpsit* is where goods are sold, or work is done, &c. without any price agreed upon; in an *action on the case* by *quantum meruit*, or *quantum valebat*, the law implies a promise and satisfaction to the value."

"When one becomes legally indebted to another for goods sold, the law implies a promise that he will pay this debt; and if he be not paid, *indebitatus assumpsit* lies. And *indebitatus assumpsit* lies for goods sold and delivered to a *stranger*, *ad requisitionem* of the defendant. If you fail in proof as to the amount agreed on, you may recover the value (*quantum meruit*)." *Wood's Justice*, 536.

"If A and B, having dealings with each other, make up their accounts, and B is found in arrear, and promises to pay the balance, an *assumpsit* lies against him."

"An assumpsit lies for the balance of an account, though the items on each side be ever so numerous."

"So if A gives money, or delivers goods to B, to merchandize therewith, and B promises to render an account, *assumpsit* lies on this express promise, as well as account."

"Where a man comes to buy goods, and they agree upon a price, and a day for payment, and the buyer takes them away, an *assumpsit* for the money is the proper action."

"Where action is brought upon a *contract*, if the plaintiff mistakes the sum agreed upon, he fails in his action; but if he brings it upon the *promise in law*, arising from the debt there, though he mistakes the sum, he shall recover." *Alleyn*, 29. Contract.

"When an *assumpsit* or promise is the ground of the action, it must be precisely set forth."

"If a promise be made without limitation of time for its performance, reasonable time shall be allowed, if there be an immediate *consideration* for it." Consideration.

"On promise to deliver a thing such a day, the party is bound to do it without request."

"But if a promise be to do any thing upon *request*, the request is necessary to entitle the plaintiff to the action, on which it shall arise." Promise.

"The time for the performance of the promise being elapsed, and the promise not performed, the law presumes request, unless in a particular case where a thing is not to be done until *request*."

"Every contract executory implies an *assumpsit* to pay money at the day agreed, or immediately, if no time be limited." Contract.

"*Indebitatus assumpsit* lies for money paid *by mistake* on an account, or *deceit*, but not for money *paid knowingly on illegal consideration*, as an usurious bond." *Salk*, 22. Mistake or deceit.

"Or if he receives more money from another in a reckoning than he ought."

Case 5. Goods sold. Excess of delivery.

Case 5.—Goods sold and delivered.

Messrs. Leyburn and Co. Auctioners, v. *R. Bengess*, suit 47 rupees for the excess in delivery of paint, by plaintiff to the defendant.

Plaintiffs failed to prove that the lots were weighed, and the defendant produced their catalogue to show that their terms are, that

Wager.

"If a man receives money for the use of another person, *assumpsit* may be had against him: and where money was deposited on a *wager*, an *indebitatus* lay for money received to a man's use." *Shaw*, 117.

Written agreements.

Written agreements. 1.—These should be, "where a man undertakes to answer for the debt, default, or miscarriage of another." 2.—"Where any contract or sale is made of lands, tenements, or hereditaments, or any interest therein." 3.—"And where there is any agreement that it is not to be performed within a year from the making thereof. In all these cases a mere *verbal assumpsit* is void." See Black. 2, Comm. 448, n. (29 *Car.* 2, *c.* 3.)

Contract.

"The same statute provides that no contract for sale of goods for the price of £10 or upwards shall be good, except the buyer actually receives part of the goods sold, or give earnest; or there be some note or memorandum in writing of the bargain being made by the parties or their agents."

Bargain.

If a person for whose use goods are furnished be liable at all, any other promise by a third person to pay that debt must be in writing." 2 *Term Rep.* 80.

3rd person.

"There is no distinction between a promise to pay for goods furnished to a 3rd person made *before* they are delivered, and one *after*." 2 *Term Rep.* 80, *Comp.* 227.

Credit.

"But if credit was given to the promiser *originally*, and the party furnishing the goods cannot recover against the person for whose use they were furnished, then the person promising is liable; as if one say, "Let A have goods, and I will pay you," or "Look to me for payment." (*Com. Dig.* tit. *action upon the case on assumpsit.*) (F. 3.)

Promises.

Promises.—"All promises and contracts are to receive a favorable interpretation; and such construction is to be made, where any obscurity appears, as will best answer the intent of the parties. Hence it is a general rule, that all promises shall be taken most strongly against the promiser, and are not to be rejected, if they can by any means be reduced to a certainty."

Insolvent.

"A promise made after taking the benefit of the Insolvent Act, to pay an old debt by instalments will not raise a new assumpsit to pay it." 4 W. P. T. 613.

Consideration.

No action on the case lieth against a man for a promise, where there is no *consideration* why he should make the promise. 1 Danv. 53.

"Considerations may be void as being against law."

Wages.

"If A employs B to transact any business for him, or perform any work, without any specific agreement as to wages, B may recover his *quantum meruit*," or what such persons usually receive, as hire, &c.

"If A buys goods of B, and no price be agreed on, the jury would award the real value."

"If A receives money for B, B can make A account for it."

"Generally, *assumpsit* for money *paid, laid out, and expended*, will not lie when the money has been paid *against the express consent* of the party for whose use it is supposed to have been paid." 1 *Term Rep.* 20. (*Tomline's Law Dicty.*)

goods are sold with all description of error. The plaintiffs said this passage only alluded to brokerage, or robbery, or goods sold by the *lots*, but not to goods sold by *weight*; and that where goods are sold by *weight* or *measure*, the auctioneers, if there had been a declaration, would have made the defalcation good, or deducted the amount of it from their bill. *Mr. McLeod and Mr. O'Hanlon* gave their opinion in favour of the plaintiffs, and said that as the goods were sold by the pound, and not by the lot, and the defendant refused to rectify the error when intimated to him, he was liable to pay for 65 pounds of paint which he received, in excess, at the rate of three and quarter annas per pound. *Decreed* 13 rupees. (*Calcutta Court of Requests, 19th December*, 1832.)

Case 6.—Goods sold and delivered.

Caly Chund Dutt, v. *Lieutenant Sturt*.

Case 6. Goods sold.

Suit for 145 rupees for sundry purchases. The plaintiff said his claim was for the value of some clothes, wines, &c. purchased by the defendant, and that he had presented his bills for the same.

"Defendant allowed the correctness of two bills, the one for sicca rupees 24, eight annas, and the other for 12 sicca rupees, which were for clothes, &c. but as for the charge for the *wines and liquors* he had purchased these articles through his sircar, and until the moment the bills were presented to him, he did not know from what shop those articles were supplied. With regard to the remaining charges for silk stockings and bombazeen, &c. he had purchased those articles from the plaintiff on an understanding that he would be allowed ten days to see if they could be procured cheaper at any other shop, and as such the bargain would not be binding till the expiration of that period, within which he was certainly allowed to return the goods if disapproved of; and he had intimated to the plaintiff the day before yesterday, that he was at liberty to take away those articles. The *Commissioner* (Mr. Dobbs) said that the defendant ought to have returned them through his sircar, to the shop of the plaintiff. The plaintiff denied that the goods were ever tendered back to him, and said that when he went, according to the intimation of defendant, to demand them, he was put off daily by Lieutenant S. On being asked by the Commissioner if he would take them back, he refused to do so. The Commissioner having decided this part of the case against the defendant, proceeded to the charge for the wines, &c.; when the plaintiff acknowledged that he had no order for the supply of those wines from Lieutenant S. nor did he bargain with him for them; and further that, that was the first transaction with the defendant, and the liquor was purchased by

Lieutenant S.'s sircar in his own name, for the use of Lieutenant S., and he had never received any payment from the defendant for goods sold to his sircar for his use. The sircar likewise stated on oath, that he had made the purchase in his own name, and that if any debts were due to the plaintiff on that account they were due by him, and not by the defendant; that he had asked the plaintiff to show him his accounts, as he had regular dealings with him, and said that if any balance appeared against him, he would readily pay him; but this the plaintiff had refused to do, but took out the *warrant* against the defendant."

Principal. "The plaintiff denied that he had regular dealings with the witness, or that he had refused not to show his accounts; and added that he considered the defendant responsible for the whole, and not the witness, who was merely an *agent* in the transaction. The Commissioner said that the defendant not having purchased or ordered these liquors, nor given a voucher for them, he was not liable to be sued for payment of them, but the sircar only was liable: and he, therefore, decreed the balance after deducting for the liquors. *Decree* 94 rupees eight annas. *(Calcutta Court of Requests, 4th January,* 1833.) (49)

Agent.

Decree.

Decree less.

(49) "If A authorise or direct B to do an act, it is, in law, the act of A, and may be so alleged in pleading." The action, therefore, should be against A.

"Before the act of B can be given in evidence as the act of A, it must be proved that B was the agent of A; 1*st, direct*, as where the agent is called as a witness, and proves that he was authorized to do the act, or transact the particular business. If the authority was in writing it must be produced, that it may be seen whether it has been pursued. If under a power of attorney, it must be produced, and proved: parole evidence inadmissible." 2*ndly*, from the relative situation of A and B. 3*rdly*, from their habit and course of dealing, or 4*thly*, from A's recognition of B's act, or his acquiescence in it."

Agent. "Where an *agent* had been employed for a length of time to pay for work of a particular description, and workmen were always referred to him, his acknowledgment of a debt was held to be binding upon his principal. So where the defendant's *wife* usually gave orders for goods, her acknowledgment of a debt being due within six years, was held to be evidence against her husband. So where the wife had taken lodgings for herself and her husband, and afterwards gave notice of quitting, upon an action brought for use and occupation, it was held, that the acknowledgment of the wife was evidence against her husband; and *Lord Kenyon* said, that where a wife acts for her husband in any business or department by his authority, and with his assent, he thereby adopts her acts, and must be bound by any acknowledgment, or any admission made by her respecting that business, in which she has acted for him. In such respects, the wife does not differ from any other agent. So an admission by a clerk usually employed in corresponding on business, is evidence."

Wife.

As agent.

Clerk.

Case 7. Work done.

Case 7.—Work done. *Japeeraddy, v. F. H. Asphar.*

"The defendant was sued by plaintiff for sicca rupees 138, two annas, being the balance of an account due to him for work done in his profession of a builder. Plaintiff entered into an agreement with defendant to repair two houses in Moorgyhutta, one for sicca rupees 240, and the other for sicca rupees 180, exclusive of some additional work which was to be charged for by measurement, and by plaintiff's estimation amounted to sicca rupees 43 and two annas. Previous to plaintiff commencing the job he received an advance of sicca rupees 100, and subsequently, at different periods, 50 rupees more, but on the work being completed it was very badly done; and he, plaintiff, had failed to abide by the terms of his agreement; and on his applying for the balance of the account, defendant refused to pay it on the above grounds, and threatened plaintiff if he did not do it better, he would bring an action against him for the amount he had already received; upon which plaintiff immediately instituted the present claim."

"Defendant requested the *Commissioner* to depute some person to go and examine the premises, and report upon the manner in which the work was done, particularly the painting and carpenter's work. The *Commissioner* observed, that the report of an *European* builder would be more satisfactory. The case was postponed for 10 days to enable the defendant to get a builder to report upon the manner in which his premises have been repaired, and also to measure the extra-work that had been done, from which the estimate will be formed." (*Calcutta Court of Requests, 13th January,* 1832.) (50)

Agent bound if he execute an instrument. Public officer not answerable. Agent principal abroad.

"*An agent may generally repel an action against himself by proof that he acted on the footing of an agent, and was so understood, unless he execute an instrument in his own name.* A public officer trading on behalf of the public is not liable on contracts made by him in that capacity. One who contracts on behalf of Government is not liable, although the contract be by deed. *But, if a person represents himself to be an agent for one who resides abroad, it seems that he is personally liable.*" (Starkie, vol. ii. p. 54, 62.)

Dustooree.

Dustooree *not taken.* A respectable female preferred a charge of assault against a shop-keeper of the Chandney-choke bazar, before Messrs. McMahon and Trower. Defendant said, that when the muslin was purchased, it was distinctly understood that *no dustooree* should be exacted. The bench fined the defendant, but directed the plaintiff to pay the full amount, *as she was not legally warranted in making any deduction.* (*Calcutta Police, 15th February,* 1831.)

(50) So in the case of *Ram Narain Mistry, v. Frith, Gordon and Co.* the decision was postponed for 10 days, to allow an European carpenter to decide, as to the sum due to plaintiff. (*Before Mr. Commissioner O'Hanlon, Calcutta Court of Requests, 12th December,* 1832.)

Case 8. House rent. Re-heard case.

Case 8.—RENT OF HOUSE, *J. W. Eastwood,* v. *J. Huson.*

"Plaintiff sued for sicca rupees 37, 11, 9, the amount of a bill and costs that had been decreed against him, in favour of present defendant in March last."

"32 rupees of the above sum were recovered by present defendant for the rent of a house in the Cooly bazar, in which plaintiff had resided, and he sought to set aside that verdict, and recover the original sum and the costs in the case, on the ground that the house was not habitable. The sum had been decreed against him in the former case, because it was not then possible for him to procure witnesses to prove his allegation."

"Mrs. Collins deposed, that she lived in the house previously to Mr. E. when it leaked, though it was not the rainy season; and Mr. Goddard deposed that the house appeared in a very bad condition: but neither of the witnesses could state from their own knowledge that any of Mr. E.'s property had sustained any damage in consequence."

"Mr. E. said, the landlord had repeatedly promised to repair the house, and that he had submitted to inconvenience in remaining in it so long, because other houses were not to be got in the Cooly bazar, because it was the seat of his business; and because he was in daily hopes that he would fulfil his promise of repairing it. He had been put to an expense of upwards of 10 or 12 rupees in getting the house repaired himself at different times, when he found it absolutely necessary."

Renter should quit, if out of repair. If remains, his fault.

Mr. Commissioner McLeod said, "that as plaintiff had lived in the house, and chose to put up with the inconvenience, he must pay the *rent.* He had not been forced to stay in the house, and, when he found that his landlord did not fulfil his promise, he should have left it. *If he had proved the house untenable, he might have recovered his rent, but he had failed to do so:* and the only thing he could recover, now, would be the amount that he could prove he had *expended in the necessary repairs of the house.*"

Off-set. May get amount of repairs.

"Mr. E.'s servant proved that 24 grammees had been employed at different times, but he could not state the quantity of materials that had been used. Mr. E. said it would be impossible to prove such items, at such a distance of time." (51)

(51) In such cases, it is very easy to keep an account of the quantity of materials used, by daily entries into a book, and by the servants in the person's service.

Rent.

Bissumber Holdar of Chinsurah, by his mooktear (Attorney) *Tarrachund Holdar,* v. *G. Hill,* suit for 100 rupees rent, situated in Brigeetullow, for September 1832.

"A verdict was given for plaintiff for rupees three, six annas, the estimated amount of the *labour* of the grammees, and he was directed to pay the *costs of suit.*" (*Calcutta Court of Requests, 15th June,* 1832.) On proof.

Case 9.—No interest on shop-bills, in ordinary cases. *R. J. Carberry, &c.* v. *F. Palmer.* Action for 276 rupees, one anna, four pie, for various purchases, as per account current. No interest except, &c.

Defendant acknowledged the debt, but refused to pay interest; he further begged the court to be allowed time to pay it by instalments. The *Commissioner* (Mr. McLeod) decreed the original bill without interest, and said, that unless there existed a previous understanding that after the expiration of a certain period interest would be charged on the bills, the tradesmen have no right to charge interest; with re- Instalments.

"Defendant objected to pay, as he had already paid for September, 1832, less one rupee two annas, by payment to Mr. Alexander Bennett, architect, for repairs done to the house previously to defendant taking possession. Defendant proved that on settling to rent the house on a lease for a certain period, he had plaintiff's authority to get the house put in proper order; that he had obtained an estimate from Mr. B. in August, 1832, amounting to rupees 98, 14, which estimate was sent up to Chinsurah, to plaintiff, for approval and sanction; that plaintiff signified his approval of the estimate to the defendant through Tarrachund, (which Tarrachund denied,) and authorized defendant to incur the expense, and to reimburse himself from the forth-coming rent of September, 1832."

"Plaintiff called on defendant to prove the authority. Defendant said he could, by two witnesses, in whose presence it was given *viva voce*, by *Tarrachund Holdar*, with the sanction and consent of Bissumbher Holdar. Defendant produced bills signed by the proprietors for subsequent months in proof of his willingness to pay the just demand for house rent, and of his having paid rent up to the last month, viz. December, 1832, and the receipt of the architect in proof of payment of the rent for September, 1832, to the extent of rupees 98, 14. Mr. A. B. the architect and another witness having corroborated defendant's statement, the case was dismissed. Defendant paying one rupee two annas, the balance on September's rent, and the plaintiff paying all costs." (*Before Mr. Commissioner McLeod, Calcutta Court of Requests, January,* 1833.)

Magdalene Legh, Executrix of W. Legh, deceased, v. *T. Yeatherd.* For 80 Sicca Rupees, for house rent. Mr. A. Gego, for plaintiff, said, it was for house rent for two months, at 40 rupees. Defendant produced a promissory note from plaintiff to defendant, for 150 Sicca Rupees on stamped paper, and that as the note was due, he had deducted the rent. Case 2 Rent.

Mr. G. for plaintiff said, the note was signed by plaintiff, and not by the deceased; the present claim was for house rent on account of the estate of the deceased; and that plaintiff was not the sole heir.

The *Commissioner* (Mr. McLeod) asked if there were any *lease*, and if plaintiff had taken out any *probate*; if such were the case, they must be produced in court. Case postponed for five days. (*Calcutta Court of Requests, 30th November,* 1832.)

Not unless plaintiff agrees.

gard to the allowing time to pay the debt by instalment, (52) the court had not the power to compel the creditor to grant that accommodation: all that commissioner could do, was to delay the *decree warrant* being issued for one month, and even then if the plaintiff within that period took an *affidavit* that the defendant was about to leave the *jurisdiction* of the court, the court would grant the *writ* on the *affidavit*. *Decreed* the original bill without interest, payable in one month. (*Calcutta Court of Requests, 28th November*, 1832. (53)

Case 3. Ejectment. Agent.

Ejectment. *William Hopper, v. Clements Brown.* Colonel H., the proprietor of certain property at Dum Dum, left India for England, and authorized Lieutenant Jarvis to act as *agent*. 'Lieut. J. let *Fairlie House*, at Dum Dum, to Brigadier B. at the *monthly* rent of 250 *Sicca Rupees*, with an understanding, that the tenant, so long as he remained at Dum Dum, should have the premises at that rent. The payments were made monthly to Messrs. M. and Co. and the rent was considered to be due on the first day of each month. In June last, Colonel H. returned to India. Lieut. J. had died, and Colonel H. not liking the terms at which the house had been let, served Brigadier B. with notice, dated 13th of November last. Brigadier B. refused to quit, and the present action was brought. It was urged for plaintiff that there was no proof that Lieut. J. had any authority to let the premises for an indefinite period, and that the regular monthly payments were sufficient to show that the house had been let from month to month, as is the usage of the place. Defendant contended that the agreement had been made for an indefinite period, and that Lieut. J. was plaintiff's authorized agent.

Notice to quit. Agent. Non-suited. Notice informal.

The *court*, leaving all questions of law undecided, non-suited the plaintiff, on the ground of *informality of notice*; the house having been taken on the *first* day of the month, and the payments being due on *that* day, the notice to quit ought to have been for one month *after that period*." (*Supreme Court, 30th January*, 1833.)

(52) See case 3.

Case 1. No interest on bills.

(53) "In the case of *Captain J. H. White*, in the *Insolvent Court*, 25th January, 1832, the Commissioner, (Sir J. Franks,) the court remarked, that (Tailor's) bill, and several others in the schedule, were not chargeable with interest."

Cases 2. Insolvent.

In the case of the late Lieutenant Cullen, of Artillery, in the Insolvent Court, June, 1833, the chief commissioner ordered, that the creditors only get 5 per cent. interest, unless where more had been specially promised by the petitioner.

Case 3. No interest on drafts. Paid part of a bill. Verdict.

In the court of K. B. 27th June, 1823, there was an action, *Egg, v. Coleraine*, (the celebrated *George Hanger*.) The defendant gave a draft to pay J. Egg £17 16s. 6d. dated 11th March, 1778, the simple interest on it amounted to £36 10s. The L. C. S. (*Abbott*) said, *interest* could not be allowed upon the draft. This draft was paid, but in 1819 defendant refused to pay interest on it. The balance of the account (of which the *principal* of the draft was part payment) was £13 14s. *Verdict* for the plaintiff, *damages* £13 14s.

Case 4. Interest, if any understanding to may.

In the case of *R. Philips*, (Court of Commissioners of Bankruptcy,) 1st February, 1833, the Commissioner (*Mr. Williams*) said, "that the precedents cited against the claims did not apply to the principle of the case; and that *Lords Hardwicke and Thurlow* held, that, *when circumstances arose from which inference could be*

Case 10.—HIRE OF A BOAT.

Case 10. Hire of a Boat.

J. Maskeranus, boat agent, v. *C. Ridge, Indigo Planter.* Suit for 70 rupees, for the hire of a boat and for sundries.

Mr. A. Gego stated for plaintiff (whose agent he was) that 14 rupees were for brandy, which defendant allowed to be correct; the balance, for boat-hire from plaintiff from Dacca to Calcutta, and thence to Berhampore.

Desertion of dandees.

Defendant said he would prove desertion of the dandees, of which he gave immediate notice to the agent at Calcutta, *Mr. Joakim Sinaes*, and by which he lost 10 days, for which he ought not to be charged. That he was charged back-hire from Calcutta to Dacca, instead of from Berhampore to Dacca, which was only 10 days; and, in fact he had only conditionally agreed to pay the return boat-hire, which conditions he did not consider fulfilled. And that he had Factory receipts to prove that he had paid a larger sum than was credited to him in plaintiff's account current. Plaintiff said fresh dandees had been sent next day, on hearing that the others had absconded. M. S. said he had received no more than what was credited to defendant.

Too much back-hire.

Books, ordered to be produced.

Notice.

Agreement.

Receipts and witnesses.

The *Commissioner* (Mr. Dobbs) postponed the case, and ordered plaintiff to produce his books as to the entries of the different payments from defendant; the date of defendant's notice regarding the desertion of the boat by the boatmen, and the day the others were supplied in their stead; and likewise the agreement of defendant with plaintiff as to the terms on which he hired the boat: the Commissioner also told defendant to bring the receipts, and the witnesses he mentioned, as necessary to prove his case. *Case postponed* for five days. (*Calcutta Court of Requests, 17th December, 1832.*)

drawn of any such understanding between the parties, interest should be paid, although not expressed upon the instrument itself; most of the parties in this case being dead, (P. absconded in March, 1794, and there was a dividend in 1832, giving 20s. in the £. and leaving a surplus of £6,700 coming to the insolvent from several creditors, on promissory notes, not bearing interest upon the face of them)—it was necessary for him to receive evidence of such a usage and custom of trade, as would justify the supposition of an implied contract between the parties; and several respectable mercantile men had stated it to be the general custom, that when bills were dishonored, and afterwards paid, interest was always added." (*Times, 2nd February,* 1833.)

Or by custom of trade

Or on bills dishonored & afterwards paid.

So I am informed that, though interest on shop bills is not claimable of right, yet, in the Calcutta Court of Requests, interest is allowed, where the defendant absconds from the jurisdiction of the court, or has promised payment often and not kept his word; or in other cases in which, as a *court of conscience,* they may think the plaintiff entitled to interest. See note 20.

Warrantry of horses.

Case 11.—WARRANTRY OF HORSES.

Glasgow, v. *Noor Ally.*

Reheard.

This case came on the 25th May, 1832, and was postponed for defendant's witnesses. Plaintiff sued for 235 rupees, 110 of which he had paid defendant for a horse sold to him (plaintiff), warranted sound and quiet. Mr. G.'s Attorney stated that plaintiff had purchased the poney from defendant on 2nd March last, for 210 rupees, receiving from him a warrantry that it was sound, quiet, and free from vice. A fortnight afterwards the poney was sent to Messrs. Cook and Co. to be broken in for a buggy, and was put into a brake a few days afterwards, but he had scarcely ran three miles, when he became so exhausted that he was taken back to the stables. He was examined by one of the partners, a V. S. by profession, who found that he had an inflammation in the lungs, and that he was unsound. Defendant refused to take the poney and return the money, as so long a time had elapsed since the sale.

Warrantry.

Certificate of.

The *certificate of warrantry* was handed into court, which defendant endeavoured to nullify by pretending, that though signed by him he did not know its contents, (he had before acknowledged that he had warranted the poney sound,) it being *English*: however it was proved to have been explained to him by his sircar, in whose presence and that of a Mr. Rogers, he signed it.

Evidence as to being unsound long before.

Mr. Skeavington, V. S., a partner of Cook and Co. deposed, that the poney was in an unsound state, that he had an inflammation in the lungs; that he must have been unsound for six or 12 months before he was put into the brake; and that it was quite impossible that he should have contracted the disease since he had been in plaintiff's possession: since inflammation was a slow disease, and the poney exhibited some of its final symptoms. That it could not have been brought on by over-driving in the brake, as it was of long standing; and though its violence had at present somewhat subsided, yet it would certainly return if the poney had any work to do.

And probability of return from work.

Defendant said Mr. S. had given a more favorable opinion a short time previous to the sale: this Mr. S. denied. The case again resumed to-day, and defendant said he could prove by witnesses, that the poney was healthy, and not sick, when in his stables.

Offer to prove animal healthy.

Mr. Commissioner Dobbs said, they must be professional persons. Defendant contended that although he had given a warrantry, yet that could not have effect for more than a day or two. Mr. D. said, "he was very much mistaken, *if he warranted a horse sound, and it turned out to be unsound, he was liable to be sued for the purchase-money, even though*

Must be by professional men.

If warranted sound, liability; though

he had not been aware of the horse's unsoundness at the time of sale." not aware of unsoundness.

Mr. S. proved that the poney was then in as good a condition as at the time of sale ; *he having done no work for some time back.*

The amount paid for the poney was 210 rupees, besides which plaintiff sued for 25 rupees for expenses that he had incurred in medicines and other things purchased for his use. Mr. D. told him that he was not entitled to the 25 rupees, as he ought to have given notice to remove the poney directly he found he was unsound. Plaintiff not allowed expenses for medicines. To give notice to take back.

A verdict was given for plaintiff for rupees 210, the sum paid for the poney, which he was directed to return to defendant. (*Calcutta, Court of Requests, 1st June,* 1832.) (54) Verdict for Plaintiff and horse returned.

CASE 12.—HUSBAND LIABLE FOR DEBTS OF WIFE. Case 12. Husband liable for debts of wife.

(54) In the case of *Paul, Esq.* v. *Hardwick*, Ct. K. B. at N. P. before *Lord Tenterden*, and a common jury, 5th February, 1831. Case 1. Crib-biter.

An action on the warrantry of a horse sold by defendant, a horse-dealer in Tottenham Court Road, to plaintiff, the banker, in July last.

The warrantry was contained in the receipt given to defendant for the price of the horse as follows : Warrantry in receipt.

"Received of J. B. Paul, Esq. the sum of sixty-five pounds, for a bay gelding, warranted sound, and free from vice." The alleged unsoundness or vice was, that the horse was a *crib-biter.* Sale by auction.

It was proved by plaintiff that defendant had notice to take the horse back ; and that he refused, stating that *crib-biting* was "*no vice.*" He admitted that he knew the horse was a crib-biter at the time he sold it to plaintiff." Notice to take back.

"*Richard Tattersall* proved the sale by plaintiff at auction on 12th July last." ("*Sold at once*") for 26 guineas. The net proceeds £23 19s. 6d. (It appeared by subsequent evidence, that defendant having got the horse *again, sold it to Rev. Dr. Halcomb.*)

Six veterinary surgeons were examined, two for plaintiff and four for defendant; varied in their opinions for plaintiff. *Mr. Sewell* said, crib-biting was an unsoundness, and *Mr. Clark, for plaintiff,* that when it became confirmed, so as to affect the *health* of the animal, it was an unsoundness.

Professor Coleman, for defendant, stated, that horses had the habit of crib-biting in very different degrees. The meaning of the word "*vice*" was some vicious quality, which was dangerous to the owner, rider, &c. and not merely a defect, or fault; because, in that case, *tripping* or *shying* would be a vice. A crib-biter might be a vicious horse, but not necessarily so because he was a crib-biter.

"If a horse only occasionally bites his crib, but supports his *condition, and can perform all the duties of a horse, then I should say he was not unsound.*"

The *habit* of crib-biting frequently produces *disordered function,* which was the effect of swallowing the air in the attempt to lay hold of some fixed object. That produced *indigestion, and a disordered stomach, a difficulty of breathing, with spasms and inflammation, and if the disorder got lower down, it produced a disorder of*

Husband to control his wife.

Leaton, v. *Espinasse*. Amount £28, 5*s*, 6*d*. for goods delivered to defendant's wife by plaintiff. Defendant (an eminent Barrister) denied his liability for any amount exceeding £10, which sum he had paid into court.

the bowels. The habit of crib-biting might be acquired from imitating other horses, but that was by no means the most frequent cause. It frequently attached to high-bred horses, and others that were kept long without food. In 99 cases out of 100, that was the main cause of crib-biting. As the horse in question had been stated to be in good condition, witness should infer that none of its functions were impaired, and its health was not affected by this habit; and his opinion was, that *in general crib-biting did not affect the health of the animal.*"

"Horses (crib-biters) are *not draughted from a regiment, unless they have some other defect, besides crib-biting.*"

"Crib-biting did not arise from impaired functions in the animal, though it sometimes produced that effect."

Lord Tenterden. "Suppose a crib-briter sold to-day in good condition, in six months hence it is found to have inflammation in the stomach or bowels, with a difficulty of breathing, or any of the other symptoms you have described, should you say it was unsound or not?" *Witness*. "*Unsound when sold, inasmuch as you would be able to trace the effect from the cause.*"

"*Mr. James Turner*, V. S. for defendant, said crib-biting was frequently contracted by imitation. He believed that it was *a decided unsoundness in many cases.*"

"*George Gosden*, V. S. for defendant. Had known the habit of crib-biting to exist in various degrees."

"*John Lythe*, V. S. for defendant. Had known many horses, particularly in the army, to have the habit of crib-biting, and yet their *general health not affected by it, and are not unsound, unless it affects their health. He never cast a horse for it.*"

Lord Tenterden. "The question for the jury was, whether the horse was unsound, or laboured under a defect which could be properly called a vice:" (the jury stopped the summing up, saying they had made up their minds.)

Verdict, for plaintiff, £41, 0s. 6d. the difference between the price, the plaintiff paid for the horse, and the net proceeds of the sale, (i. e. between £65 and £32 19s. 6d.)

Case 2. Cough.

Knight, v. *Borer*, Ct. C. P. February 3rd, 1831. L. C. J. Tindal and common jury. The question was, whether a *cough*, now pronounced to be *chronic*, had existed before plaintiff purchased the horse; or was the consequence of the treatment which the animal received since his coming into plaintiff's possession. The *jury* were of opinion, that the horse was unsound at the time of sale. *Verdict* for plaintiff, *damages* £48.

Case 3. Unsound.

In the case of *Shaik Ibrahim*, v. *J. G. W. Curtis*, Supreme Court, Calcutta, 18th March, 1833, the advocate general obtained an order *nisi* to show cause why the verdict in this case should not be set aside, and a verdict entered for plaintiff, on two grounds; first, that the condition of sale was, that the horse should be returned in *three* days, which was not complied with; *secondly*, that the horse was not returned in a *reasonable* time after the discovery of his unsoundness." (Mr. *Prinsep* contended, "that to vacate the contract, a *legal fraud* was not sufficient, but a *criminal* one must be apparent."

Mr. Serjeant Wilde for defendant. "Alluded to an action which sometime ago had been brought against defendant for jewellery supplied" (£230), "to his wife. The case, tried before *Lord Tenterden*, was given in favor of *plaintiff*. *Defendant* moved the court *in Banco* for leave to set the verdict aside, and enter a non-suit. A conditional rule having been granted, the question was argued at great length

Mr. J. Franks. "His impression was, that the warrantry was independant of the three days, and that the time was allowed to enable defendant to judge if the horse was in other respects adapted for his purpose."

"With regard to *time*, it has been held that no lapse of time can alter a contract originally false; besides, it must be shewn that the defendant acquiesced in the limitation, of which there was no evidence, and I take it, therefore, that the warrantry was a general one and not confined to three days. Then, as to *fraud*, it is clear that the horse was unsound, and had been so for some time; and there is evidence to show plaintiff was aware of it. *The case, then, is independent of the warrantry. When an action is brought on a warrantry, the party is bound at all events by the terms of it, but where he knowingly sells an unsound horse as sound, he is liable for the fraud; and in Blackstone's Com. 2, note 451, it is stated, that the purchaser may recover back the price he has paid; provided he can prove the seller knew of the unsoundness or vice at the time of sale; for the concealment of such a material circumstance is a fraud, which vacates the contract.*" Knowingly sell liable. Concealment a fraud.

Mr. J. Ryan, of same opinion. It may be true that Shaik Ibrahim does not usually warrant, but if he employs an European to transact business for him, he must be bound by all he says and does "(*agent*)." *I think this was not an honest case; and decide it on the ground of fraud.* The rule must be discharged, with costs. (*Calcutta Courier*.)

At the Hertford Assizes, August, 1764, a citizen of London, *plaintiff*, and a farmer of Stanstead, *defendant*, for a horse bought of the latter, warranted sound, and soon proved defective in his *eyes*. The *jury* without leaving court gave a *verdict* for plaintiff; and *L. C. J. Mansfield* took occasion to declare, that *if at any time, any horsedealer should take the price of a sound horse for an unsound one, the warranting, or not warranting, should make no difference in the decision.*" (*Annual Register*, vol. vii. p. 93.) Case 4. Defective eyes. Unsound sold for sound. Liable, warranting or not.

"Where defendant, on the sale of a horse, stated that he was sound to the *best of his knowledge*, and added, "*but I will not warrant*," held, that such representation was equivalent to a *promise* that the horse was sound to the best of his knowledge, and that the action was properly laid in *assumpsit*." (*Wood*, v. *Smith*, *I. M. and Malk*, (*N. P.* 534.) (*Jeremy's Digest*, 1831, 1832.) Case 5. Warrant to best of knowledge liable.

"Where a *race horse*, which had broken down in *training*, was a *crib-biter*, and had a *splint*, and *but for which* would have been worth £500, was sold, after discussing those defects, for £90, with a warrantry that it was *sound wind and limb* at the time of sale; it afterwards again broke down in training, upon which the action was brought; held that the proper direction to the jury was, *whether the horse was, at the time of the bargain, sound wind and limb*, saving those manifest defects contemplated by the parties." (*Margetson*, v. *Wright*, *7 Bing.*) (*C. P.*) 603 Jeremy's *Analytical Digest*, 1831, 1832.) Case 6. Race horse. Crib-bited & splint.

before the court, and the conditional rule for setting aside the verdict and entering a non-suit, was made absolute." (*Serjeant W. here read the judgments delivered seriatim*, in the Ct. K. B.)

Husband must provide necessaries.

1.—"The cumulative effect of them was that, *where a husband and wife resided together, and the husband neglected to provide his wife with such matters as befitted her condition of life, he would be liable for such necessaries, though taken up by the wife without his authority; but if the*

Case 7. V. S. buying without full examination.

A. V. Surgeon Mr. T——— bought an Arab horse from an Arab merchant, *Abdool Kasim*, from Bombay, on 29th March, 1830, for 900 rupees, with an *agreement* that if the animal did not *go lame* from the *splints* in his fore-legs within two months, he was to keep him: in the course of half an hour's trial, the European who rode him brought him back *lame.* Mr. V. S. B. (before a Court of Inquiry) gave an opinion that the horse has an injury of the dorsal muscles and ligaments of the loins, and is diseased in both fore-legs from an enlargement of the sesamoid bones. Is of opinion, from the gentle riding he has received, that he must have been formerly injured. That if a horse has received an injury in the loins, he may by *rest* recover so far as to walk without showing symptoms of lameness; but, when a *weight* is placed on his *back*, he will unquestionably show lameness.

Weakness in loins will return, if a weight be put on the back.

"The horse before purchase was not minutely examined, he was trotted round in hand for a few minutes. I wished the merchant to have the animal mounted, which he declined."

Opinion of Court of Inquiry.

Opinion of Court of Inquiry. (President—a Lieutenant-Colonel of Cavalry, and a Captain and Lieutenant of Infantry, Members.) "It appears to the court, that the horse was injured, to a certain extent, previous to being purchased by Mr. T———: but, as the state of the horse, since it came into Mr. T.'s possession, evinces that it has received additional injury, the *court* recommends that some *compromise* should take place between the parties; and that the sum of 200 Sicca Rupees is deemed sufficient remuneration to the merchant." (*Agreed to by the parties and paid—this case, exceeding* 400 *Sicca Rupees, could not have been brought before the Court of Requests, without plaintiff's sinking nearly* 500 *Sicca Rupees.* Kurnal, 8th April, 1830.)

Compromise.

200 Rs.

Case 8. Accident while being broke in.

Case 8.—*Accident. P. Calonas, v. J. Peters,* a *Jockey.* Plaintiff sent his mare to defendant, to be broke in; the mare got a blemish in her eye by negligence of defendant or his syce, and was lame. The commissioner directed the mare to be sent to stand at livery for 20 days, to see if the mare recovered. Mr. V. S. *Skeavington* said the blemish was not quite gone, that the lameness was the same, but that no one but a judge of a horse could observe it. "*That in England, a horse was sent to the Veterinary College to be fired—after the operation, the animal in rising from the ground broke his leg, and the owner brought an action against the College for the value of his horse. L. C. J. Abbott, on being satisfied that every attention had been paid the animal during the operation, non-suited plaintiff on the ground that, if the court was to take cognizance of every case that arose from pure accident, the whole of its time would be engrossed by similar actions!*"

No liability if by accident.

Mr. Commissioner Brietzecke, after consulting with *Mr. McLeod*, non-suited plaintiff; but defendant was ordered to pay the costs of the suit." (*Calcutta Court of Requests, 13th February,* 1832.)

Costs by Defts.

husband had taken care to provide tradesmen of his own (55) *to supply all necessary articles for his wife, he would, in that case, not be liable for any which she might contract in such circumstances.*"

Mr. Serjeant Taddy, for plaintiff, in reply, contended that, "while husband and wife lived together, as in the present case, the husband was liable for whatever goods were delivered at his house for her use." In support of this doctrine, he cited a case before *Lord Ellenborough*, to which he, Serjeant T., requested the serious attention of all married men. After laying down the principle above stated, Lord E. said, "*that it was no excuse in law for a married man to say, that his wife was unmanageable and disobedient, as he was bound, and presumed, to exercise over her such control, and to administer such correction, as would keep her within the bounds of discretion.*"

Verdict.—"The jury on returning into court declared, that after very considerable difficulty, they found for the whole amount; giving defendant credit for the £10 which he had paid into court." Verdict.

"The learned judge declared, that if it had not been for the *tender* of this £10, and the impossibility of ascertaining to what items in the account it was intended to apply, the defendant would have had an extremely clear case in law and fact." (*Ct. C. P. Westminster, 21st February*, 1828.) (56)

(55) Or, he may give public notice in the newspapers that he will not be answerable for his wife's debts: and so, only pay for necessaries.

(56) "A great number of ladies, apparently married, were in court during the whole trial, and waited about an hour for the verdict." (*Courier, 22nd Feb.* 1828.)

Case 1.—*Rowland, v. Gargrane.* Action for £168, balance of a bill for £229, for *plate, trinkets, and jewellery* goods; all except a musical (*or-molu*) clock had been ordered by defendant's wife without his authority. Until this transaction, defendant (*a solicitor*) had allowed his wife £40 a year for dress, besides presents. *Lord Tenterden* observed, *that a tradesman was not justified in trusting a wife on the credit of her husband, unless for such articles as he might reasonably believe the wife had the authority of her husband to order. If it were otherwise, any man might be ruined by his wife. His lordship said that he was one of those who thought the facility with which credit was given by tradesmen in the metropolis to the young, and to the indiscreet of all ages, was one of the greatest evils prevalent in it.* He then recapitulated the evidence, and left the case to the jury. Verdict for the plaintiff, for the whole amount of the demand. (*K. B. Westminster, 23rd April*, 1830.)

Case 1, expensive furs and tippets.

Tradesman should not trust, except for reasonable articles.

Case 2.—*Wayte, v. Wellesley.* (Muffs and Tippets.) K. B. 10th May, 1831. Plaintiff's witnesses prove that the furs ordered by Mrs. W. were very costly—a sable and ermine *tippet* was £80; a sable *muff*, £50. Case 2.

Should not trust without consent of husband in expensive articles.

Lord Tenterden observed to the jury, "It is said it was the duty of the plaintiff to inform Mr. W. whether he could consent to have these articles or not. You are tradesmen, and know whether it is the custom to do so. If it is usual for husbands to rely on what a lady says and does, there seems to be no reason why Mr. Wayte should not think Mrs. W. had not the authority of her husband. If you think too much is charged, take it off the amount."

Verdict, for plaintiff, for £264 19*s.* thereby deducting the 3 guineas charged for keeping the furs.—*Morning Post, 11th May*, 1831.

Case 3. Separated and living in adultery.

Case 3.—*Davis*, v. *Sir W. Biscoe, Bart.* to recover for goods sold and delivered to the wife of defendant. *C. P. before L. C. J. and a special jury, 11th December*, 1830.)

"The *L. C. J.* summed up, and told the jury, that the law had quite determined that, in the event of a wife, separated from her husband on any grounds whatever, forming a connexion with another man, the husband was not liable for the debts she should incur; the only question therefore, for their consideration was, whether they believed the testimony of the witnesses that had been called to prove Lady B.'s adultery." Jury retired, and after an absence of ¾ of an hour, found a verdict for the defendant.—(*Morning Chronicle, 13th Dec.*, 1830.)

Verdict for defendant.

Prostitutes—their "claims for *hire out*, the act being contrary to *morality*, which is part of the law of the land, are *illegal claims;* they may claim for *other debts*, but *not for prostitution.* A woman, living in *adultery* from her husband, having no means of support, the person under whose protection she lives must *subsist her*, but the question as to *wages* (unless an agreement to give her so much a month, as a *servant, &c.*) could not be sustained."

CHAPTER VI.

GENERAL RULES OF EVIDENCE.

Section 1.

1.—"Evidence ought to be confined to the point at issue. Every proof ought to bear directly, or indirectly, upon the facts in dispute." Direct points.

2.—"The substance only need be proved." Substance.

3.—"The affirmative of the issue ought to be proved, by the affirming party: but admits of exceptions." (1) Affirming.

4.—"The best evidence to be had to be produced. Still the substance only need be proved by such best evidence.' '(2) Best evidence.

5.—"The court judge as to the *legality* of evidence; the jury, as to the *credit* due to it." (3) Court judge of legality.

6.—*Circumstantial evidence* has, in some instances, been found to produce much stronger assurance of guilt, than the most direct and positive. As a general rule, positive evidence, from a credible eye-witness, is the most satisfactory that can be produced, and the feeling of mankind inclines to it, in preference to merely circumstantial. If positive can be produced, circumstantial ought not to be trusted." (4) Circumstantial.

7.—"*Confirmatory* evidence, where *accomplices* are admitted. It is not necessary to confirm *every part* of their evidence. But it should be confirmed by clear and unimpeachable evidence by others who agree in the *main facts*; without consent or contrivance; when they acquire a credit, independent of character, from their agreement and consistency." (5) Confirmatory.

8.—*Hearsay.* "It is a general rule of evidence; that all produced against a person should be in his presence, to give the benefit of cross-examining the person, and should be on oath. Hearsay evidence is, therefore, not admissible." (6) Hearsay.

(1) Thus, in *murder*, you charge the killing—you did not see the stroke—circumstances show that A must have killed B. Bloody clothes, sword, &c. are seen. Here, the *Law* imputes the affirmative.

(2) Phillipps on Evidence, vol. i. p. 138. If the highest evidence be not procurable, then the next best.

(3) Phillipps, vol. i. p. 16.

(4) Phillipps, vol. i. p. 156, and Note 106, section 15.

(5) Phillipps, vol. i. p. 39.

(6) Phillipps, vol. i. p. 218, but it may be introductory to other evidence—A tells B he heard there was a *fire* at C's house from D. This is no evidence of F

Depositions. 9.—DEPOSITIONS *of prisoners taken before magistrates.* "The magistrate is to be sworn. (7) The testimony of a deceased witness, examined on *oath* at a former trial of an action between the same parties, and the point in issue in both trials the same, is admissible on the second trial, and may be proved by one who heard him give the evidence. (7) The person called to repeat such deceased person's evidence must do so *precisely*, and not merely to the *effect*." (8)

Dying declarations. 10.—DYING DECLARATIONS should be taken in the presence of the party making it, if possible; but if not, and the party makes it under the belief of impending death, it is evidence." (9)

Presumptive. 11.—"*Presumptive* evidence either consists of positive or presumptive proof. *Positive*, when from immediate knowledge—*presumptive*, when the fact is inferred from circumstances usually attending such facts. A presumption can only be relied on, till the contrary is actually proved." (10)

Negative. 12.—*Negative evidence.* "Where the issue is upon the life or death of a person, the proof of the fact lies upon the party who asserts the death; for the presumption is, that he continues alive, till the contrary be proved. But, where no account can be given of the person, this presumption of being alive ceases at the expiration of seven years from the time he was last known to be living." (11)

being concerned in *arson*, but, if B, on inquiry, learns from F, that he (F) saw E apply a lighted candle to C's house, the court would admit this statement in evidence, and tell B to call F. I had this from a judge now on the bench in England.

(7) The evidence of a deceased witness before a Court of Inquiry is not, because the Court of Inquiry is not upon oath, (though sometimes it is;) if upon oath, it would be. And if A was tried, and acquitted, and B afterwards tried for same crime, what A said in his defence is not evidence against B, for confessions are against a prisoner, but not against other persons.

(8) Phillipps, vol. i. p. 219, and a prisoner might produce another witness to prove, that only the *effect*, and partially, had been given.

(9) "The prisoner's wife, having been mortally wounded by him, was attended by a magistrate, who, in the absence of the prisoner, administered an oath to her and took down her statement in writing; and it was received in evidence." *Woodcock's case*, Leach C. C. L. 3rd edit. 563. Starkie, vol. ii. p. 459.

And the dying words of Capt. Boyd, (see *Duel*, under *Inquests*,) though not on oath, were received in evidence. There may not be time for it, but they were said in the prisoner's presence.

(10) Phillipps, vol. i. p. 144. In the case of murder, presumptive evidence, when passive and circumstantial, is to be had. G. O. C. C. 11th Feb. 1828.

(11) Phillipps, vol. i. p. 187.

13.—"*Hand-writing* may be proved by any person, well acquainted with it; who has seen the party write. (12) Comparison of hand-writing is said not to be allowed of, and has never been settled by the judges." (13) Handwriting.

14.—"*Public written evidence* is received on proof of the hand-writing of the person signing the document or a copy." (14) Public written evidence.

15.—*Private written evidence in the hands of defendant.* "Notice to produce it should be given to defendant: he may refuse it, which is evidence against him: the plaintiff may produce an examined copy, or give parole evidence of the contents." (15) Private written evidence.

16.—"*Affidavits* not filed, you must prove by parole evidence that they have been sworn, or, if not proved to be sworn, yet perhaps they may be received as admissions of the deponents, upon proof of their hand-writing." (16) Affidavits.

17.—*Books of merchants and tradespeople.* (7 *Jac.* 1, *c.* 12.) "Not evidence for wares delivered, or work done, above one year before the action, except he shall have obtained a bill of defendant, or obligation of the debtor for the debt; or shall have brought an action within a year next after the delivery, &c. An entry in such books is not evidence for him, he may refresh the memory of his shop-man by it." (17) Books of merchants.

18.—"*Certificates* of christening, marriages, and burials may be proved by the register in which they are entered, by giving it, or an examined copy, in evidence. Besides the register, some proof must be given of the identity of the parties married, &c." (18) Certificates, marriage.

(12) Phillipps, vol. i. p. 212. But the receipt of a letter by A is no proof of the hand-writing of B, for C may have written it. See *G. O. C. C. 12th July*, 1832; but, having once seen B write, receiving letters afterwards from him confirms A's knowledge.

(13) Raised in the case *Gurney and others*, v. *Longlands*, K. B. *in banco.* (*Abbott, &c.*) They did not decide the point, but they clearly said, "*if evidence*, it would have no great weight," and evidence, without weight, is nothing. (*Sec.* 5, *Barnewell and Alderson's Reports*, p. 330.) But, I think there is no doubt, that if a person has seen another write, say 20 years ago, and often received letters from, or seen his hand-writing, *he* might compare the *hand-writings of such person (but not with another person's).*

(14) Signed by any officer of the department in the Adjutant General's, &c. office.

(15) Phillipps, vol. i. p. 421.

(16) Archbold's Crim. Plead. p. 83. An affidavit should not be *attached* to proceedings, but *inserted* on them. (*G. O. C. C. 12th July*, 1832.)

(17) Phillipps, vol. i. p. 253.

(18) Archbold, p. 87.

Gazettes. 19.—*Gazettes.* "The London and the Government Gazettes in India are evidence. Proclamations for reprisals are evidence of an existing war. So proclamations for peace, or quarantine, &c. (19)."

Letters. 20.—"*Letters* are admitted by calling the writer, or, by proving his hand-writing; if he be dead, or cannot be produced, (20) proof of hand-writing by another is the only proof."

Notes of hand. 21.—"*Notes of hand* admissible, and proved as other written evidence."

Official papers. 22.—*Official papers.* "Reports, returns, &c. are admitted without the same strict rules of proof (required in Courts of Law) by courts-martial. (21) And so are copies attested by the adjutant-general, &c. or by an officer of the department." (22)

Promissory Notes. 23.—"*Promissory notes* are now in India on stampt-paper (23). Proof of the hand-writing also required."

(19) Phillipps, vol. i. p. 387.

(20) Certified copies have been received with defendant's consent, where originals have been mislaid. (*Sir John Murray's Trial*, p. 35, and in *Lieutenant-General Whitelock's Trial*, p. 354.) The person who enters the letter, the best evidence to prove the copy. (*Murray's Trial*, p. 341.) Produce letters before you ask a witness as to his motives. (*Ld. Cochrane's Trial*, p. 211.)

(21) Whitelocke's Trial, p. 335.

(22) Murray's Trial, p. 373.

(23) The stamp regulation *exempts* the following:—memorandum of agreement for hire of labor, and all agreements carried on by letter through the public dák between merchants and other persons. Bills of exchange or hoondees for any sum, if drawn *boná fide* from any place distant more than one hundred miles from the place where the same are made payable, and not negociated after acceptance; also foreign bills of exchange drawn in sets, and Government bills of exchange, &c. All drafts or orders for the payment of any sum of money to the bearer on demand, drawn upon any bank, banker, or agent, residing 20 miles of the place where such draft or order shall be issued, such place being specified on the face of the draft. Arbitration bonds, security bonds, taken by officers of Government, to be given to charter parties of ships or vessels, taken up by Government for troops, &c. All grants, leases, sales, or the like, wherein Government in its *political or territorial capacity*, is a party. Copies made for private use only of any person having the custody of the originals, or of his or her attorney or solicitor, and copies of deeds, &c. retained in public offices on returning the originals. Copies of papers, which public officers are directed by any regulation to make, not being declared chargeable. All leases, the annual rent not exceeding 12 rupees. All leases, or pattahs, given by authority of Government; receipts and discharges given for the purchase-money of Government securities, or shares of the Bank of Bengal, or for any money deposited in any bank, or with any agent, to be accounted for on demand; if no interest be stipulated to be paid thereon (*if*, those chargeable as on a promissory note.) Receipts written upon promissory notes, bills of exchange, drafts, or orders for the payment of money, duly stamped. Receipts and discharges given to Gomastas and others, being ser-

24.—"*Initials* cannot be construed, it has been said, to mean any particular person, for W. H. may mean two different persons, (24) but in prosecution, &c. *initials* are constantly stated by *inuendos*, and proved to mean particular persons. Thus K——g, for king. *State trials*, vol. 20, p. 806—9. And in the case of *Egg*, v. *Coleraine*, K. B. 27th June, 1823, the defendant, formerly *George Hangor*, put his initials to his account "*G. H.*" If a man writes a letter and you prove his hand-writing, though he signs only his initials, it is sufficient; or, if he enclosed such a paper, and the envelope were signed with his name in full; or if by any other evidence you trace it to him, it is evidence." Initials.

25.—"*Defaulter's book* is evidence to prove habitual drunkenness, under the 51st Article of War." (25) Defaulter's Book.

26.—"*Former convictions* may be received in evidence from the printed G. O. or from an attested copy thereof, as if by distinct court-martial, by a copy of the crime, conviction, and sentence, (26) or if by a regimental court-martial, by the entry in the court-martial book: (27) if the trial were lost." Former convictions.

27.—"*Proceedings of a former court-martial* may be admitted. But where a court referred to the former minutes, when, apparently there existed no cause, why the witnesses, whose depositions were thus obtained, should not have been examined before the court; the commander-in-chief noticed the irregularity." (28) Proceedings of former Courtmartial.

vants of the party giving the receipts, in acknowledgment of the performance of service, or of the said servants having rendered account of trusts and monies committed to them. Letters by the post acknowledging the arrival of any promissory notes, bills of exchange, or other securities for money. Receipts or discharges written upon or contained in any mortgage-deed, or other security, or any deed of conveyance, settlement, or other instrument duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured. Wills, testaments, and the like, together with deeds merely declaratory of trust, pursuant to any previous settlement, deed, or will. *Law*—Mochulkas taken on the release of prisoners from criminal jail. In cases in any court not exceeding 150 rupees, copies of decrees and plaints shall be exempt. Mookhtarnamahs executed by native officers and soldiers belonging to the regular corps on the military establishment of the Presidency of Fort William. All charges and informations, petitions and communications—judicial or of revenue. Schedule (A. and B.) A. D. 1829, Reg. X. 16th June, 1829.

(24) Lord Cochrane's Trial, p. 248.

(25) Subject, nevertheless, to contrary proof not being on oath: Simmons, p. 239. See general regulation, p. 282.

(26) The D. J. A. G. should attest a copy and send it to the regiment. The originals are sent to England. Or, by the entry in the court-martial book.

(27) Simmons, 240.

(28) G. O. C. C. 30th March, 1832. This was a trial for *murder*: acquitted

Present with the actors. 28.—*Presence with other actors, during part* of their acts. "Where persons were not identified as the actual perpetrators of an assault on police officers, in the execution of their duty, the fact of their having been present with a party committing that illegal act, was proved; they therefore partook in the guilt of the assault." (29)

Evidence as to 3rd persons. 29.—"*Evidence as to third persons*, though not usually allowed, still if necessary for the prosecution or defence, should be admitted; the court are not answerable for the result. It becomes the court's paramount duty to examine the necessary evidence." (30)

Cross examination. 30.—*Cross examination sometimes carried too far.* (31)

Former bad character not evidence. 31.—*Former bad character not to be given in evidence.* "It would not be allowable to show, on the trial of an indictment, that the prisoner has a general disposition to commit the same kind of offence, as that charged against him. Thus, in a prosecution for an infamous crime, an admission by the prisoner, that he had committed such an offence at *another time*, and with *another* person, and that he had a *tendency* to *such* practices, ought not to be received in evidence." (32) *Exception.*

thereof; but found guilty as an accessory after the fact, and sentenced to 11 years on the roads. *Disapproved.* (Signed) E. Barnes, *Commander-in-chief.*

In such cases, it should be recorded on the proceedings that the witness is dead, cannot travel *(sick)* or kept away by the prisoner, or not in the country. In fact, in the case of *murder*, very strong proof should exist of not being able to call the party. *Courts of Inquiry* are never received as evidence. They are referred to by J. A. &c.

(29) G. O. C. C. 11th March, 1828. All present when any act (*murder*, *&c.*) is committed, aiding, or joining, though striking no blow, are parties by their presence. If a man sees a mob burning a house, or doing other unlawful act, if he cannot prevent it, he should separate himself from the guilty.

(30) G. O. C. C. 31st December, 1829, where the court disallowed it on the prosecution and admitted it on the defence. If such evidence is material, the court should call for it.

(31) An officer tried for gross prevarication before a general court-martial, *and honorably acquitted.* Remarks G. O. C. C. 12th February, 1830. "He is convinced, that a young officer had been cross-questioned on matters of opinion, to an extent not justifiable."

As Baron Garrow once observed, when Sol. General, "He never knew much gained by a cross examination." If not done with judgment, you may make a person not used to it, contradict himself, while the cool, collected, determined liar can never be made to alter; he will swear through thick and thin.

(32) R. V. Cole. Mich. term, 1810, by all the judges. *MS.* Phillips, vol. i. 170.

Thus if A is charged with murdering B, and though it is provable that he murdered C, you cannot prove the murder of C. But, if there are former acts commited

32.—*Examination of a witness should be in a courteous manner.* "Not tedious or vexatious, nor be asked why he recollects so much for one side, and so little for the other." (33) Examination of witnesses.

33.—*Irrelevant and extraneous matter should be thrown out.* (34) Irrelevant matter.

34.—*Apology,* when made and received, and a reprimand given for conduct, has induced the Commander-in-chief not to confirm a sentence. (35) May be made public if retracted. (36) Sometimes directed by the Commander-in-chief. (37) And where an officer made an apology to one, and expressed his anxiety to do so to all, and his brother officers were solicitous, on such grounds, to effect a reconciliation; the Commander-in-chief remarked, that no proper feeling could have been injured by its acceptance. (38) Sometimes as a condition of pardon. *Note* 37. Apology.

38.—*Ordeals* by chewing rice, &c. are illegal means when used to elicit evidence in a court of justice. (*A. D.* 1803, *Reg.* L.) (39) Orders.

Section 2.—Witnesses.

1.—*Who may be.* "All persons having the use of understanding, and believing in a future state of rewards and punishments, are admissible and competent witnesses, unless disqualified by conviction," (and judgment) "for an infamous crime, or by interest (1) in the subject matter of the inquiry." (2) Who may be.

by A against B, and no reconciliation has taken place since the last quarrel, or quarrels; such evidence of enmity against B are part of the *malice aforethought.*

So, where a court passed an opinion as to a circumstance which occurred at Java, (many years before, and not connected with the case,) the Commander-in-chief withheld his confirmation of such opinion. (*G. O. C. C. 17th April,* 1830.)

Exception in *military* cases after finding guilty. The court may inquire into the prisoner's *general character.* (*Circular H. G. 24th February,* 1830.) Simmons, 197. (1)

(33) G. O. C. C. 12th July, 1832.

(34) "Party-spirit often produced by it." G. O. C. C. 12th July 1832.

(35) G. O. C. C. 16th April, 1830.

(36) G. O. C. C. (*Madras,*) 6th February, 1832.

(37) G. O. C. C. 3rd September and 1st December, 1828.

(38) G. O. C. C. 8th May, 1829.

(39) But it prevails as a native custom, used to work upon the fears of the party accused, or suspected; and where in this manner it was employed in the case of a sepoy before trial, it was not disapproved of. A. G. Letter, No. 818, 27th June, 1832. This may cause the man's trial, but such proof cannot be used as a *confession;* for, being extorted, it is illegal. There must be evidence to prove the fact (*theft, &c.*) direct, or presumptive. Case of a Sepoy before trial.

(1) "In *forgery,* the party whose name is forged, is a competent witness. Section 32, 9, Geo. iv. c. 74. By the same Act, Sec. 34, felons, &c. after endur-

Who not. 2.—"*Idiots, madmen*, and *lunatics*, during the influence of the frenzy, are incompetent to give evidence: but during the lucid intervals, lunatics may be examined. (3) Persons *deaf and dumb*, if they are capable of communicating their ideas by signs, and have a due sense of the obligation of an oath, may be admitted as witnesses, and examined through the intervention of an interpreter. (4) The competency of children depends not upon their age; for there is no fixed and settled age at which an infant may be sworn, but upon the degree of knowledge and understanding, which, upon examination, they appear to possess. (5) Children cannot be examined except upon oath, and it is therefore not their general acquirements, but their knowledge of religion and a future state, which will determine their competency. It is usual to examine children of tender age, before the oath is administered to them. (6) No account can be received from the relation of others, which is given by one who is incompetent, from defect of understanding, to be examined as a witness." (7)

Children.

All evidence on oath, except. 3.—All evidence must be on oath, except in certain cases. (8) Even a Peer cannot be examined upon his honor. But all who believe in a future state of rewards and punishments, whether Jews, Mahom-

ing their punishment, are competent. No conviction for a misdemeanor (except *perjury*) renders incompetent. (*Sec.* 35.) Affirmations of Quakers or Moravians, (or *declaration* in such solemn form as the court shall think binding,) and of *natives* of India, are receivable instead of an oath, in civil and criminal cases. (*Sec.* 36.) All persons are to be sworn by the form they think most binding, instead of being required to swear upon "The *Holy Evangelists*." (Sec. 37.)

(2) 2 Stark, Ev. 393.

(3) 2 Stark, Ev. 394.

(4) 1 Phillips, Ev. 18, 1 L. C. L. 408. Captain Keighly, J. A. G. Madras, in his Compendium of the Law of Evidence, 2nd Edition, 1829, p. 15, Note, mentions the case of Elizabeth Penny, whose house had been broken into and robbed by John Hart and William Williams, (Hereford Assizes, 24th March, 1824,) and the husband having died since, she (widow) was the principal witness, and being deaf and dumb, her daughter, Silvia Penny, being sworn to interpret, (her mother being asked as to the obligation of an oath, and as to a future state,) did so with great rapidity.

(5) 1 H. P. C. 302, 2 H. P. C. 278.

(6) 2 Stark, Ev. 393. "In a case at Gloucester, in 1795, before Rooke, J. where a female infant was the principal witness (*injured party*), and knew not the obligation of an oath, the trial was postponed till the next assizes, and the child instructed by a Clergyman. This was approved of by the Judges, and she was examined at the next assizes; and the prisoner convicted, and executed."

(7) 1 Phillips, Ev. 19.

(8) See Note 1.

metans, Gentoos, or infidels of whatever denomination, are competent witnesses. (9)

4.—"A Jew is sworn upon the Pentateuch, a Turk upon the Koran, and each witness according to the peculiar form of his religion. (10) Jews.

5.—"The testimony of one who commits an offence inconsistent with the principles of common honesty, and is convicted thereof, is of too doubtful a character to be admitted in a court of justice." (11) Dishonesty.

6.—*Crimes which render incompetent*—are treason, (12) felony, (13) every species of *crimen falsi*, as perjury, subornation of perjury, piracy, swindling, cheating, barratry, præmunire, and bribing a witness to absent himself and not give evidence; (14) outlawry in treason or felony renders incompetent. (15) It is the conviction which renders the witness incompetent, and that must be proved by the record of the judgment; (16) for an admission of the conviction will not render the witness incompetent. (17) The disability may be removed by pardon, (18) except in perjury; (19) by the endurance of the punishment, which has the effect of a pardon, in felonies and misdemeanors, except perjury; (20) or, by reversal of judgment. (21) Crimes rendering incompetent. Conviction and judgment produced.

7.—*Infamy.* The testimony of avowed accomplices, either for or against his associates. But the admission does not disqualify; so any party implicated in the guilt may be a witness, and being competent, no confirmation of his testimony is in strictness required. (22) But, in practice, the judges require confirmation, not in *every* particular, but sufficiently to satisfy the jury. (23) Infamy. Accomplices.

(9) 1, Stark, Ev. 80, 81.

(10) 1, Stark, Ev. 82.

(11) Gilbert, L. E. 256. But it must be recollected, that this goes rather to *credit*, than *competency*: an accomplice in a *murder* is admitted—there is no conviction: and felons who have undergone their punishment are purged, but in convictions of perjury, never!

(12) 5, Mod. 16, 74; Kel. 33.

(13) The distinction between grand and petit larceny is abolished by 7 and 8, Geo. iv. c. 27, 29, and by 9, Geo. iv. c. 74, S. 77.

(14) 2, Stark, Ev. 716; see Note 11.

(15) 1, Phillips, Ev. 29, subject to the removal under Section 34, 9, Geo. iv. c. 74, as to *felons*.

(16) 2, Stark, Ev. 716.

(17) 11, East, 309.

(18) 6, Geo. iv. c. 25, S. 1; 7, and 8, Geo. iv. c. 28, S. 13, and 9, Geo. iv. c. 74, S. 33, 34.

(19) 5, Eliz. c. 9; 2, Russ. on Cr. 596.

(20) 9, Geo. iv. c. 32, S. 3, 4, and 9; Geo. iv. c. 74, S. 35.

(21) 2, Stark, Ev. 722; 9, Geo. iv. c. 74, S. 13.

(22) 2, Campb. 133.

(23) 2 Russ. on Cr. 599, 600.

Relationship not, except husband and wife.

8.—*Relationship.* No tie of relationship disqualifies, except that of husband and wife. It is an admitted rule that neither is competent in civil or criminal cases; even though divorced by Act of Parliament, if the subject of inquiry occurred during their connexion. (24) But where neither is a party, nor interested directly in the inquiry, either is competent to prove any fact not tending *directly* to criminate the other. (25) There are exceptions to this rule. (26) Dying declarations are *ex necessitate* admissible against the husband in the case of murder. (27)

Exception to competency.

9.—*Exception to competency.* It is now agreed, (though formerly exceptions were only made at the time before sworn, on the *voir doré*,) (28) that if the ground of objection appear at any time during the trial, the witness shall be considered incompetent, and his evidence rejected. (29)

(24) 2, Russ. on Cr. 604-5.

(25) 2, T. R. 263; Phil. Ev. 82; 2, Stark, Ev. 709-10-11.

(26) In cases of a rape on herself, *aiding, &c.* by the husband, by all the Judges, in Lord Castlehaven's case, State Trials, vol. iii. 402, and other cases of personal injury. And may give evidence for him where both are robbed. Thus the celebrated Dr. Dodd was travelling in a postchaise with his wife. He and his lady were robbed of a purse of money, and William Griffiths (prisoner) discharged a pistol into the carriage. Dr. D. could not swear to the person of the prisoner. Nor could the post-boy, but Mrs. D. did; and the prisoner was convicted and executed, 17th December, 1772. Annual Register, vol. xvi. p. 147; Chronicle, p. 66, January 1773. In high treason, *wife* competent against the *husband*, Gilb. L. of F. by Loft, 252; McArthur, ii. 80.

In the case of Gunner William Brickly, 2nd company, 1st battalion Artillery, tried for mutinous conduct, &c. in going to the quarters of Serjeant-major Potter, 1st battalion, Artillery, and calling him a "d——d Irish bugger," or words to that effect, the prisoner desired to call the *wife* of Potter. The court over-ruled it, and the Commander-in-chief observes, "the rule of exclusion cannot be considered applicable to the present case, in which *Potter* is not a *party*, but merely a *witness* in support of the *public* prosecution for a criminal offence, and in which the evidence of his *wife* would have been for or against the *Crown* or the *prisoner*; but could not have been for or against the *husband*, in the sense implied by the words of the law. As the prisoner has been deprived of evidence, to the benefit of which he was legally entitled, His Lordship is under the necessity of refusing to confirm the judgment of the court, and directs the prisoner may be released, and return to his duty. (*Convicted,*) not confirmed, (*Combermere.*) G. O. C. C 31st December, 1829.

(27) L. C. L. 563.

(28) 1, T. R. 719, to speak the truth. "Whether he shall get or lose by the matter in controversy; and if it appears that he is disinterested, his testimony is allowed, otherwise not. (*Blount.*) Phillips, Ev. c. 5, S. 8.

(29) 1, T. R. 719; 2, Campb. 15; Wight, 64; 2, Stark, Ev. 757; Jervis's Coroner, pp. 230, 235.

10.—*Rules regarding witnesses.* 1.—Except in *treason*, (30) the court decide whether a witness, not intended to be called for the prosecution, shall be called. (31) Court may call any, except

2.—*Natives.* Women in the courses are not examinable at such times. (32) Women.

3.—If a person who took a letter be required to prove delivery, and be not found, court should record the fact, that it may be seen, why he could not be examined. (33) Not called, say why.

4.—List of witnesses for the prosecution should, in all practicable cases, be given to the prisoner; (34) but, where a prisoner demanded it as a *right*, the refusal by the J. A. was approved of. (35) List of.

5.—*Single witness.* Where there was but one witness, against two prisoners, whose evidence consisted of repeated assertions and denials of the same fact, and who accounted for the contradictions, by saying, that she had not possession of her proper senses, the Commander-in-chief observed, that he could never approve of the condemnation of any person *(murder)* upon the uncorroborated testimony of such a witness. (36) Single witnesses.

6.—*Arrest.* Witnesses in arrest should not be released from arrest. (37) In arrest may be.

7.—Prisoners may be brought from prison, to give their evidence. Prisoners may be.

8.—If *sick*, the whole court must adjourn to the sick person's room. (38) To send a medical certificate, G. O. C. C. 12th July, 1832. Sick, adjourn to the room.

9.—*Witness drunk.* Where a witness was drunk, the Commander-in-chief observed (though a charge had been preferred), that it was unnecessary to submit it to further investigation. (39) But, in other cases, he would be tried. Drunk.

(30) List given to the prisoner of witnesses, jurors, (and copy of indictment,) 10 *clear* days, (excluding *Sunday*,) by Stat. 7. Ann. c. 21.

(31) The advocate general had said, the E. I. Company did not intend calling *Dwarkanath Mitter*, (he had himself acknowledged having forged the signatures of several of the Secretaries to Government.) Raja Buddinath Roy's trial, before *Sir E. Ryan*, who said "it was for the court to decide." Supreme Court, Calcutta, 18th January, 1830.

(32) Sale's Koran, vol. i. c. 2, p. 37.

(33) See Remark, G. O. C. C. 13th August, 1828, par. 5, (4th charge,) the witness could not be found.

(34) G. O. C. C. 23rd September, 1826.

(35) G. O. C. C. 13th August, 1828.

(36) G. O. C. C. 27th November, 1828.

(37) G. O. C. C. 16th December, 1829.

(38) Delafons, p. 227, and *MS. J. A. G. O.*

(39) *Cashiered*, by the sentence, G. O. C. C. 31st December, 1829.

Distant.

10.—*If at a distance.* "In all cases where a witness may be employed in important public duties, or being at a distance, or from any other impediment, the J. A. is to inquire the nature of the evidence required. In cases where defendant refuses to disclose the nature of his proposed examination of a witness, whose attendance cannot be obtained without great inconvenience to the state, and injury to the individual, the expense must attach to defendant; but on satisfying Government, after trial, that the attendance was essentially necessary to his cause, Government will take into consideration the re-imbursement of the expense."

Sometimes by interrogatories.

"When the witness is situated as above described, and the defendant discloses the nature of the evidence required, the J. A. shall propose to the party for trial, an examination *de bene esse,* (40) that is, interrogatories by the party, to the parties transmitted to, and the answers taken before a Justice of the Peace." (41)

"In the event of difficulties, as above described, existing to the *detention* of a witness, the J. A. shall propose the evidence required being taken in presence of both parties, before a magistrate; and it is understood, that the necessity of the above cases being established, and the court-martial being satisfied, that the consent of both parties had been obtained, such evidence may be legally received on the trial." (42)

Civil witnesses.

11.—*Civil witnesses how paid by Government.* The resident, political agent, &c. if in any foreign state, applies for them, on J. A.'s requisition; the J. A. certifies that they were examined for the prosecution, and, as the expense must be authorised by the Commander-in-chief, the civil authority makes out a bill, which is countersigned by the adjutant general, and sent to Government, and to the military auditor general, with the authority to pass it." (43)

Have been sworn at Ct. of Inquiry.

12.—Witnesses have been ordered to be sworn at a Court of Inquiry: (44) but it is conceived, no authority less than the Commander-in-chief can order it.

(40) "*As well done for the present.*" Frequently ordered by the Court of Chancery, that "his (defendant's) depositions shall be taken, and allowed or suppressed at the hearing of the cause, upon the full debate of the matter, as the court shall think fit; but in the interim they have a *well-being*, or are conditional, 3, *Cro.* 68.

(41) Commanding officers of stations, or the J. A. should also be allowed to take these.

(42) Circular, No. 2486, J. A. G. 22nd November, 1830, under the Act, William 4th, the case only extends to civil cases. K. v. Lady Biscoe, K. B. 24th January, 1833.

(43) A. G.'s letter, No. 672, 5th April, 1830.

(44) A. G.'s letter, 28th March, 1816, and, I believe, on other occasions.

13.—*Dâk expenses of witnesses.* The J. A. to satisfy the general officer of the division under which the person required is serving, of the necessity; by whom the order will be issued. (45) Travelling expenses of witnesses.

14.—*Witnesses dismissed for prevaricating* in their evidence. (46) Prevarication.

15.—*Witnesses on leave.* Leave cancelled; (47) and the officer applies for it, as being required as a witness. On leave.

16.—*Members* may be witnesses, and resume their seats. (48) Members.

17.—*Privilege of witnesses from arrest.* By the Articles of War in the case of a general or district court martial, cl. 15, M. A. 1832, (King's), and of a general court-martial, 27 Section, 4, Geo. iv. c. 81, (Company's.) (49) Free from arrest.

18.—*Witnesses refusing to be sworn or answer questions.* To be attached by the Court of K. B. &c. or Supreme Court, cl. 15, M. A. 1832. If not *attending*, 4, Geo. iv. c. 81, Sec. 27. Witnesses refusing to be sworn.

19.—*Witnesses may see questions in very particular cases before the trial; but must not tell their answer.* (50) May see questions before trial.

20.—*Prisoners tried separately may, on being acquitted, give evidence for each other.* "They were tried separately, and reciprocal witnesses: as they had not had the benefit of such testimony, Lord Hastings, Commander-in-chief, would not confirm the sentences. (51) Prisoners may be.

21.—*Witnesses not in the list may be called.* (52) Not in list, called.

22.—*Amicus curiæ* cannot claim exemption on the ground of being a confidential adviser of the prisoner. (53) Amicus curiæ.

(45) No. 315, A. G.'s letter, 19th March, 1829. This should be put in division orders, and such, confirmed by the Commander-in-chief, will be passed.

(46) Two native officers of the Orissa F. B., G. O. C. C. 1st September, 1827.

(47) G. O. C. C. 11th November, 1829.

(48) State Trials, vol. vi. 1612, (Note;) vol. xviii. p. 123.

(49) It is said, not before a regimental, &c. court-martial being omitted. This should be corrected.

(50) Opinion of two lawyers, one said to have been Mr. (afterwards Lord) Erskine. At a general court-martial, January, 1783, Sir C. Gould, J. A. G. Trial of General Murray, by Sir W. Draper. General M. wishing in case of death, to have proof as to a certain fact, Captain Don, the witness, made an affidavit before the J. A. before coming into court. Captain D. did after this see questions before he came into court. The questions appear to have been answered. The affidavit was of course useless, Captain D. being present.

(51) Discharged. G. O. C. C. 5th August, 1820. See McArthur, vol. ii. p. 78. So, at the O. B. 5th December, 1822. Elizabeth Piller and Margaret Smith, indicted for stealing £2 12s. 6d. *Baron Graham* directed a verdict of acquittal as to *Smith*. Verdict, not guilty, and *Smith* was examined as an evidence for *Piller*.

(52) Simmons, 115.

(53) G. O. C. C. 16th July, 1830. What he saw or heard said, he must repeat, as any other witness, or you might defeat a prosecution by making him (a material witness) an *Amicus curiæ*.

To be tried should not be. 23.—*If to be tried should not be a witness.* (54)

Remark on. 24.—*Court may remark on witnesses' evidences.* (55)

Natives must name father, &c. 25.—*Native witnesses* (Hindoos) *must* be obliged to name their father's, mother's, or child's name. The *civil courts* will not take their depositions till they do. The *refusing* to answer would be punished.

Voir dirè. 26.—*Voir dirè, distinction of.* "You shall true answer make to *all such questions* as shall be asked you;" but as a *witness in chief,* to "speak the *whole truth.*" Dr. Paley, p. 461. (56)

SECTION 3.—OATHS TO NATIVE WITNESSES.

B,heels. 1.—*B,heels* swear, "May a *dog* eat me, if I lie."

Hindoos of Malwa. 2.—*Hindoos* of *Malwa* swear, "May a *cow* eat me, if I tell a lie," or "touch a cow with their right hand." Natives consider the *left* impure.

Nehurs. 3.—*Nehurs* tribe of *Malwa* swear by sun and moon.

Goorkhas. 4.—*Goorkhas,* by placing the edge of their sword to their throat, swear, "May this sword cut my throat, if I tell a lie."

Hindoos' sacred oath. 5.—*Hindoos of India.* The placing both hands upon the head of a parent or child, and the witness invoking curses on his own head, if he swears falsely, is esteemed a sacred and solemn oath. The touching the ear of a dog, is esteemed by the *Hindoos* a sacred oath, and equal to the *Gunga Toolsee.* (1)

Garrow, &c. ountaineers. 6.—*Garrow, or Garrow hill people,* sometimes sworn on a *cat.* 3rd vol. Transactions of the Asiatic Society. At Simla, they are told, if they lie, they will die in two months. Some having died shortly after swearing falsely, they fear under this form.

(54) A prisoner was a witness on a trial, (*G. O. C. C. 4th December,* 1831,) and afterwards tried for the same crime, (*G. O. C. C. 30th March,* 1832,) and sentenced to five years on the roads. (*Disapproved.*)

(55) G. O. C. C. 30th November, 1832.

(56) MS. J. A. G.'s O. But, after sworn in chief, the *voir dirè* is unnecessary. State Trials, vol. xviii. 596.

(1) Where a prisoner asked for a witness against him to be sworn by a form of oath most binding and prevalent in the country, "swearing with his hand on the head of his eldest son," and it was rejected by the court, (though the witness seems to have allowed, he was not taking the most solemn oath,) and allowing *another* witness to take what *he* considered most binding by calling on "*Loll Ghoroo, and blowing out a light presented to him by one of his own caste,*" the Commander-in-Chief considered it "*a material deviation from the law and practice of courts.*" He confirmed the sentence, as there was evidence of another nature to support a conviction. (*G. O. C. C. 21st April,* 1829. Queen's Trial, vol. i. p. 116, by all the Judges.) After a witness is sworn, you may ask him if the oath he has taken is binding; if he says, Yes, his answer is conclusive.

7.—Some by the implements of their trade. Trades people.

8.—*Chumars and Mehters*, by placing any kind of spirits in the palm of their right hand, and *may be* by interpreter. Chumars, &c.

9.—*Bhudist.* "A pot of water having been placed before him, (*Isoon*,) and an image of *B,hood*, the former was consecrated by the washing of the image in it. The points of a sword and spear, and the muzzle of a musket, having been placed in the water, the witness placed his right hand in it, and swore that if he did not speak truly, God would hear him; and prayed the weapons before him might destroy him, and that his death might be through them; after which, he drank the water." (2) Bhudist.

10.—*Moosulmans*, on the Korân. *Soonnees* by God, *on*, and not *by*, the Korân; the most sacred, 1st chapter and chapters 36, 89, and 112. The cover should be taken off, and the book held in the hand. Placing it on the head more sacred. Moosulmans.

11.—*Hindus*, by Gunga-toolsee, in a copper vessel, placed in their hands by a Brahmin. If no Gunga-*toolsee* or any flowers, then the grass *Koos*, placed on the head, or *Pat,hee Doorga Pat,h*, placed in the hands. The *Pat,hee Hurihuns*, and by the feet of a Brahmin, are most solemn oaths. *Natives* should bathe before being sworn. Hindoos, generally.

12.—*Chinese oath.* The witness takes a saucer, &c. given to him by a Chinese (or other person), in his right hand, strikes it against the witness box, &c. thrice, and breaks it into pieces; appealing, with uplifted eyes and hands, to the Supreme Being whom he worships, that his own body may be so broken into pieces, if he tells a falsehood. (3) Chinese.

13.—*Jews*, on the Pentateuch, or five Books of Moses, and with their hats on. Jews.

14.—Christians with their hats off. (4) Christians.

15.—*Scotch Covenanter or Presbyterian*, by holding up the right hand. (5) Scotch covenanters.

16.—*Kneeling.* A girl was sworn by kneeling on both knees, and placing the right hand upon a Bible. (6) *Scotch.* Kneeling.

(2) Assam, June, 1827, at a native general court-martial.

(3) O. B. 5th Dec. 1804, before B. Graham. McArthur, ii. 97.

(4) State Trials, xv. 898.

(5) State Trials, xxv. 999. "I do swear by God, as I shall answer to God at the great day of judgment, I will speak the truth, the whole truth, and nothing but the truth: so help me God."

(6) Mansion House, London, July, 1829.

Catholics.

17.—*Catholics' oath* is binding, though taken some time after confession. Should not be asked when they last took the Sacrament. (7)

Section 4.—Interpreters.

Interpreters, members may be.

Are sworn to interpret to the best of their knowledge. Sometimes more than one are employed. (1) If there be any difficulty, and any member competent, he may be sworn as an interpreter. (2) If a superintending officer has to conduct a trial without an interpreter, and he acts as such, he must take the interpreter's oath, besides his oath as superintending officer. (3)

(7) Queen's Trial i. 92. It is usual to place a Cross on the Evangelists. But many Catholics are sworn as Protestants; and if they do not object, no one else should.

(1) Queen's Trial i. 78. No one should interfere with. *Do.* p. 52. If a second interpreter, he is referred to. pp. 78, 79. Cannot always interpret *word for word*, p. 94. Sometimes repeats the original, and then the translation, p. 140; where two, one may correct the other, p. 42, &c. Phrases may have a double meaning; should ask for explanation, p. 31; *motions* cannot be translated, p. 36. Interpreter may ask a witness what he means by such a phrase, p. 42. Cannot always translate literally, p. 44, &c. Should be precise, p. 77. Interpreter should not be stopped in giving the witnesses' answer, p. 97. Sometimes by repeating witnesses' language, and translating phrase by phrase, p. 119. Sometimes word by word, p. 188. Interpreter for *defence* may interpret for prosecution, p. 326. *Copies* compared with *originals*, p. 348. If any doubt, to explain back to the witness, vol. ii. 790. Should not interrupt the witness, but hear the whole answer, vol. ii. 838. If a doubt, repeat the question, p. 838. Sometimes retire to consider (papers), vol. i. 349.

(2) State Trials, xiv. 580.

(3) For he swears to do justice, i. e. fairly record, &c. the evidence but not to *interpret*.

Oath Interpreter.

Oath to Interpreter. "I A. B. do swear, that I will faithfully interpret and translate in all cases in which I shall *be called on* to do so, in the cause of the present trial; and should my presence be required at the passing of the sentence, that I will not discover it to any person, until it shall have been approved or published by His Majesty, the Commander-in-chief, or other competent authority. *Neither* will I upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member, unless required to give evidence thereof, as a witness, by a Court of Justice, in due course of law. So help me God."

(*Sworn at each new trial, but only once at the Court of Requests.*)

Oath superintending officer.

Oath to Superintending Officer. "I. A. B. do swear, that I will conduct the proceedings of the native court-martial of which I here sit as superintending officer, according to the best of my abilities, the rules and articles of war, and the regulations of the service. That I will conscientiously and faithfully record the proceedings and sentence of the said court; and further that I will not communicate or discover the proceedings or sentence of the said court*, until the same shall have been approved by competent authority. So help me God."

* And should include the "vote of any particular member, &c."

General rule.

General Rule. If any doubt exists as to any phrase, it is most clear that the phrase should be taken down. On a trial, (*G. O. C. C. 27th Nov.* 1820,) the court oversat the legal time, and were directed to call back the witnesses and to read their evidence over to them, with liberty to alter if they pleased, or confirm their evidence. The interpreter had taken down *verbatim* their language in the Roman character, and no correction was found necessary. In case any doubt arises as to the meaning of a phrase, record the *Hindoostanee, &c.* phrase. If the interpreter is mistaken, the prisoner has the benefit of the Commander-in-chief's, or of any other interpreter, to correct the error: the words are fixed on the proceedings; whereas, if any number of interpreters on the spot (unless good linguists) gave the wrong interpretations, there is no remedy, the language is lost! And be it remembered, there are very many dialects: and I have known a case in which the members of a native general court-martial could not understand a *Goajur!*

Interpreter if sick, another to be appointed. G. O. C. C. 5th April, 1825.

Section 5.—Regimental Court-Martial.

Regimental court-martial.

Proceedings of an European (*or native*) regimental court-martial, held at ——, by order of ——, commanding —— regiment, for the trial of ——, and such other prisoners as shall be brought before it, (1) and appointing the following members to compose the court. (2)

Court

President. (3)

Captain A. —— Regt.

(Members).

Lieut. B. —— Regt. Lieut. C. —— Regt.

(*Sworn at each trial, but not in each case, at the Native Court of Requests. If he interprets, to take the interpreter's oath as well as his own.*)

Members' oath, regimental court-martial, Article of war (*King's*) 90, require secrecy. Section 14, Article xvi. (*Company's,*) does not. Required by Section 12, Article iv. (*Native.*)

Witnesses' Oath. "The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth." So help you God. (91, *Article of War.*)

(1) See Articles of War (King's), 79, 81. M. A. 4, Geo. iv. c. 81, S. 28, and Sec. 14, Arts. xi. xvi. xvii. xix. (*Company's*), and Sec. 12, Articles v. vi. x. xiii. A detachment or line court-martial, have a different heading. The hours of sitting are (*Europeans*) 6 A. M. to 4 P. M., *native* courts, 8 A. M. to 3 P. M.

(2) Put in regimental orders.

(3) Captain (King's.) In Company's, if not less than eight years as a commissioned officer.

Ensigns.

D. —— Regt. E. —— Regt. (4)

Interpreter.

F. —— Regt.

(A copy of the charges to be given to the prisoner, who is not to be confined more than eight days, unless a court cannot be sooner held.)

Kurnaul, 1833.

Assembly of court. 1.—The court assembled this day, agreeably to regimental, &c. orders. President and members all present. Prisoner brought into court, and called to the bar by name. Question.—Are you properly described in the charge?

Read orders. 2.—*Read* regimental order directing the court to assemble.

Court sworn. 3.—The court is sworn. (5) President swears the members, and then a member swears the president. If a *native court*, the superintending officer swears first the interpreter, who swears in the president and members, and then the superintending officer.

Charges read. 4.—Charges read to prisoner or prisoners, (*entered*.)

Plea. 5.—Plea—guilty or not guilty, (*record*), (6) (*Evidence taken if he pleads guilty*).

Statement. 6.—*Statement* by prosecutor very seldom required. (7) President, superintending officer, or any member record.

1st witness prosecution. 7.—First witness for the prosecution called, sworn; see *Oaths*, Section 3,) and examined by prosecutor, &c. Evidence in first person, singular, "I &c," 1st, examined in chief. 2nd, cross-examined by prisoner.

(4) Not under two years' standing, nor superintending officers. (*G. O. C. C. 17th December*, 1833.) Three, if five not to be had conveniently.

(5) G. O. C. C. 6th May, 1820, directs the prisoner to be informed before the court meets of the names of the members. If the prisoner can allege any valid objection, he now makes it before the court is sworn: but challenges are unusual.

(6) Under Sec. 15, 9, Geo. iv. c. 74, if he refuse to plead, order a plea of "*not guilty*," to be entered; pleading to a charge admits the prisoner's being the person.

(7) In H. M.'s service the captain of the company, &c. usually prosecutes. In the Company's, sometimes the superintending officer, or president, if no one appointed. It is clear if the witnesses are present, that the attendance of the adjutant, officer of the company, or other officer is not of much consequence; in most cases, any officer may be directed to attend. The prosecutor should be named in orders, or it should be directed by whom to be conducted. If the *adjutant, &c.* communicates the points to which the witnesses can speak, to the president, or superintending officer, (and *he* and the commanding officer should see into the evidence before trial,) there can be no difficulty. If no prosecutor (ordered) be present, or witnesses not present, adjourn and report to the adjutant.

3rd, re-examined by prosecutor, &c. 4th, examined by court. Cross-examination arises out of the evidence in chief: re-examination out of the cross-examination. The *court* are bound by no rules of limitation, they put such questions as they like at any time before the voting as to guilt. And though witnesses are not down in the list given in, the court may call any they like: but, of course, giving the prisoner the liberty to cross-examine them. Read over evidence to witness, who confirms it, and retires. Confirms evidence, retires

8.—Second witness for the prosecution (*as above*). 2nd Witness prosecution.

9.—*Adjourn* at 4 P. M. *or* 3 P. M. *if native court*. Record adjournment, till to-morrow &c. at —— o'clock A. M. Adjourn.

2nd Day's Proceedings.

10.—Court re-assembled this —— day, at —— A. M. agreeably to adjournment. President and members all present. Prisoner brought into court. (*Read over proceedings of last day, if required.*) 2nd Day's proceedings. Re-assembly. Proceedings read over.

11.—There being no more witnesses for the prosecution, it is closed. (8) Prosecution closed.

12.—Prisoner asks two days to prepare his defence—granted, (*record.*) Adjourn, as above, till ——, at, &c. Time for defence.

13.—*Defence* may be verbal, or written. It is best to call witnesses, and then read or make his defence. Defence.

14.—First witness for defence. 1, examined in chief by prisoner. 2, cross-examined by prosecutor. 3, re-examined by prisoner. 4, by court: (*and so on, as above.*) 1st Witness defence.

15.—*Evidence as to character.* Witness sworn, a member if he give a character, must be sworn as a witness. Written characters are admitted, where it would be inconvenient to produce a person at a distance. Evidence as to character.

16.—*Defence written* (*or verbal*) read, closed (*record*). Defence closed.

17.—Close court to deliberate. (Read over proceedings, if required.) Close court.

18.—*Finding*. Begin with the junior member. "Is the prisoner guilty, or not guilty." Record on a sheet of paper the answer, opposite to his name, and so on up to the president. If the court were reduced to four officers, and two acquit, it amounts to an acquittal, 'as a ma- Finding.

(8) If there be any *fact* unproved, and the court cannot procure any witness, record, "The court could procure no evidence on *this* point, and have ascertained that the man who could speak to the fact is dead, or absconded, &c."

Though he pleads guilty, evidence must be taken. (*General Regulation and Orders, p.* 202.)

If there be any discussion, clear the court.

jority must concur.' The president has no casting vote. (*So on with each charge*).

Sentence. 19.—*Sentence.* Votes in the same manner. Those who have acquitted must vote as to punishment, (*J. A. G.'s L. No. 256, 8th Sept.* 1832;) though the *quantum* may be *less.* (*See the Article of War under which the crime falls.*) The court can award six weeks' imprisonment, or 200 lashes, in His Majesty's, and 300 in the Company's, service. (9)

FINDING. FINDING. The court, from the evidence before them are of opinion that he ——, (——Co. —— Regiment,) is guilty of the crime exhibited against him, (or that he is not guilty, and acquit him ; or guilty of —and not guilty of the remainder, of which they acquit him.)

SENTENCE. SENTENCE (*in the president's or superintending officer's hand-writing.*) The court having found the prisoner guilty of the crime (or with the above exception) exhibited against him, and the same being in breach of the Articles of War, do sentence him the prisoner, ——, to receive a corporal punishment of 200 (or 300) lashes, or to undergo an imprisoment of (6 weeks), at such time and place as the commanding officer (10) may be pleased to direct. Court sentence to be dismissed, (A. G. L. 16th March, 1828.) May recommend under sentence. Must *reduce*, if a N. C. O.

Signed by President. 20.—Sentence signed by the president (and superintending officer, if native court), and interpreter.

Adjourn *sine die.* 21.—Adjourn *sine die,* which prevents the court meeting again, without orders.

Revision. 22.—*Revision.* Not more than once. (No first evidence (11)) upon grounds pointed out. There is nothing inconsistent with a member's oath, if he alters his opinion. His oath says, " If any doubt, &c."

(9) Madras, G. O. C. C. 16th June, 1827, limited to 300 lashes, and implied by G. O. C. C. 1st February, 1821, and 14th January, 1823. If there be a majority as to six weeks, &c. it carries the sentence. If as to 300 lashes the same. The dividing by five or three is not the act of the majority. If all the members vote different punishments, put the question round till you get a majority. Say, shall it be (some intermediate amount). Compare fair copy with original.

(10) Clause 16, King's M. A. and G. O. C. C. 1st June, 1815.

(11) He must (*confirming officer*) not be the president ; nor can the governor of any garrison, &c. be.

The sentence may be any not illegal, even though they might have been inflicted without trial, rather than allow a prisoner to escape punishment ; and where an European was stopped his liquor only, it was not disapproved of. (*A. G.'s Letter, No.* 2669, 19*th September,* 1828.) So that extra drill or duty would fall within this rule.

and the custom of war in the like cases, and this is one of them—the custom to correct errors.

Approval & confirmation ordisapprove.

23.—*Approval and confirmation, or disapprove, &c.* The commanding officer who orders the court approves and confirms, or disapproves, remits, mitigates, &c. It is published in regimental orders. If a prisoner is acquitted, he must, if no revision, be immediately released.

Remit, &c.

24.—Commanding officer may confirm, remit, mitigate, but not change or *commute*. (12)

Not commute.

Published in orders.

25.—Published in the regimental orders.

Inflictions.

26.—Parade to inflict, corps formed into a square, read the crime, sentence, and remarks. Punishment, sometimes, remitted on the parade; which produces the best effect.

Dissolved prisoner sent to Hospital.

27.—Court-martial dissolved in orders, and members, &c. return to their duty.

28.—Prisoner sent to Hospital. (13)

Remark.

Re-swear at each trial separate proceedings.

Remark.—Any detachment on service, or command, may hold a court-martial, if there be three officers, without the commanding officer, can be assembled, (14) of the proper rank. At each trial, to re-swear the court. The proceedings in each case separately made up and numbered. (15) The punishment may be inflicted by commanding officer (*native regiments*) at once (16)

(12) Prohibited by G. O. H. G. 24th June, 1830. Madras G. O. C. C. 30th April, 1827. *Imprisonment* six weeks, G. O. H. G. 7th April, 1825, and J. A. G.'s Letter, 2064, 15th August, 1829. Should be awarded when it can be undergone in places fit for military confinement. (*G. O. H. G. 20th August*, 1829.) The *commanding officer* directs it to be *solitary*, not the court, if he thinks fit, and names the place in orders.

(13) The opinion of the Commander-in-chief, that "the period a prisoner passes in the Hospital during the term of imprisonment, sentenced by a court-martial, must be estimated as a portion of the said imprisonment." (*J. A. G.'s Letter, 24th June*, 1833.)

(14) Simmons, p. 63.

(15) G. O. C. C. 20th August, 1829.

(16) Circular, No. 1661, (A) 2nd November, 1832. May inflict, mitigate, or remit, and discharge by their own order, or, where example is not necessary, or its infliction might disgrace his family, &c. may discharge without flogging. The sentence to be recorded in the discharge and monthly casualty list. General officers (under G. O. C. C. 6th November, 1818,) to point out irregularities, or excess of punishment, or frequency of it, and to bring the same to the notice of the Commander-in-chief at inspections; or at once, if necessary. The Circulars, 19th March, and 16th June, 1827, in force as to the crimes for which corporal punishment should be inflicted among the native troops, viz. "*stealing*," "*marauding*," "*violence on a march*," "*gross insubordination*," serious offences against disci-

Reduction and suspension. *Reduction* not for a time, but *suspend.* (*J. A. G. L.* 1261, 15*th July,* 1826).

Contempts. *Contempts* are punishable by committal, sending in charges. See *Contempts, Section* 12.

line, or actions of a disgraceful and infamous nature, unbecoming the character of a soldier." (*Cir.* 1451, 16*th June,* 1827, *A. G. O.*) discharge must follow the flogging, par. 6; though may remit and retain, par. 3, (2*nd November,* 1832.) The *following classes,* though flogged, may be retained: *drummers serving* with native corps, (*No.* 465, *A. G. L.* 30*th April,* 1832,) *commissariat, or ordnance drivers,* (*A. G. L.* 1909, 1*st July,* 1828.)

Sepoys amenable for acts done before discharge. (*L. M. S. to Government, No.* 219, 11*th December,* 1823, *par.* 3.) Warrant officers not triable by a regimental or garrison court-martial, (*G. O. C. C.* 8*th May,* 1824.)

Courts-martial numbered, (*G. O. C. C.* 20*th August,* 1829.) *Discharge of native soldiers,* duplicate descriptive rolls sent to head-quarters, (*Circular, No.* 550, 20*th April,* 1831.)

False complaints before magistrates (*civil suits, &c.*) not to subject sepoys to trial, (*Circular, A. G. O.* 2736, 26*th September,* 1828.) Return of courts-martial, vide forms with regiment.

Crimes not triable by Regt. Ct. Ml. *Criminal Acts* not triable by regimental but by general courts-martial, under 9, Geo. iv. c. 74, calling the attention of commanding officers and soldiers, to the liability of trial for any criminal acts against the life and property of each other, and the inhabitants of the country, (*Circular, No.* 851, *A. G. O.* 15*th June,* 1829,) published in division orders. *Mutiny, desertion,* or sleeping on his post, cannot be tried by a regimental court-martial; except under *riotous* conduct, absence without leave, or neglect of duty, &c. *The G. O. C. C.* 18*th May,* 1830, directs no recourse be had to trial by *general or district court-martial;* unless the offence shall be of so serious and grave a nature, as obviously to call for trial before such courts; the object being to confine all inferior cases to trial by regimental courts-martial.

King's. *King's.* Under Article of War, 85, commanding officers submit to the general officers of divisions, a statement of the case, (and Court of Inquiry if held,) with an extract from the defaulter's book. There are some crimes denominated by the 77th Article, as *disgraceful,* which, may, if they have not been repeated, but stand alone against the soldier, (*Circular, No.* 649, 23*rd November,* 1829,) be tried by a regimental court-martial.

Company's. *Company's.* All regimental, &c. court-martials are sent (*G. O. C. C.* 6*th Nov.* 1818,) to the D. J. A. G. for submission to the general officer, and subsequent registry by the J. A.: copies of which are monthly sent to the A. G. and J. A. G. The J. A. submits his remarks to the general officer, pointing out any irregularities, &c. Any breach of discipline, or interior economy of corps, he may point out. But the general officer's remarks are properly addressed to the commanding officer through the A. A. G. &c. of the division. Where there is no J. A. the A. A. G. or M. B. make the register. At *Madras* (*G. O. C. C.* 12*th March,* 1832,) the J. A. makes his legal remarks in the column for remarks—in the register in *Bengal,* the general officer.

Williamson, p. 74, No. 126, says, an adjutant and serjeant-major have been *prosecutors.*

General Remarks.—As the president or superintending officer conducts the trial without any legal adviser, and as the discipline of the army depends so much upon the regularity, correctness, and justice of the proceedings, the duty is a very important one. There should be no hurry allowed of, and if there be any evidence required, not produced by the *adjutant*, it is no excuse that, because not produced by *him*, material evidence is not examined into. If the prisoner be tried on any charge, it is the duty of the court to see that the best and fullest evidence is adduced. Nothing so much calls into question the character of a regiment as frequent trials; and where there are constant acquittals, it gives judicial proceedings the character of harshness or negligence.

It is the duty of commanding officers and their staff to see that there is, 1st, a necessity for trial, to support discipline; and 2nd, that there is every probability of a conviction; for, if not, unnecessary trouble is given, and it lowers the standard of the administration of justice. If there be any doubt, hold a Court of Inquiry, but never hastily bring any man to trial; it is an injustice to the service, and to the prisoner.

Where trials seldom occur, and then conviction follows, it shews that due consideration has been given before-hand.

A court should not award an incommensurate sentence, because it deems the crime of little magnitude, or owing to the prisoner's length of confinement; but they may recommend him to *mercy* on such grounds, and each member agreeing to the recommendation signs it, and it must be under the sentence. Recommendation.

The officers do not support their commanding officer, if they do not sift the evidence to the bottom, and an incorrect precedence in one regiment may be communicated to other regiments, and be of serious consequence.

The King's regulations and orders, p. 199, declare these duties to be "*of the most grave and important nature, and in order to discharge them with justice and propriety, it is incumbent on all officers to apply themselves diligently to the acquirement of a competent knowledge of military*

The advantage of this system is very great, as it brings the mode of conducting the inferior courts prominently before the highest military authorities: and sometimes proceedings are called for.

Mess room available. (*G. O. C. C.* 14*th December*, 1822.) *Young officers* to attend who have not been six years in India. (*G. O. C. C.* 25*th June*, 1832.) Mess rooms places of assembly. Young officers to attend.

law, and to make themselves perfectly acquainted with all orders and regulations, and with the practice of military courts. With this view, the commanding officers of regiments are to require all officers, on their entrance into the army, and before they are nominated members of courts-martial, to attend the proceedings of such courts, until the commanding officers may deem them competent to the performance of so important a duty."

Before a trial therefore, the president, and members (and superintending officer,) should read over the mode of procedure, and consult the Articles of War, and note down such as bear upon the case, and in case of camp-followers, consult Section 18, *Chapter* 1.

JURISDICTION.—May try a native doctor. Must not sentence him to corporal punishment. (*G. O. C. C.* 28*th February*, 1832.) May dismiss. (*G. O. C. C.* 24*th May*, 1832.) May try, in fact, any one not having *a warrant.* See Note 2, Section 8. So that serjeant-majors and quartermaster serjeants may be tried by a regimental court-martial, though it is more usual to try them by a detachment court-martial.

Officers detached in command. Two or more companies.

An officer detached on command, if he has only one European officer to superintend a native court-martial, besides himself, may hold a detachment court-martial. The proceedings approved and confirmed by himself should be sent to the D. J. A. G. who returns them (after submission and registry) to the commanding officer; who makes them over to the commanding officer of the regiment on his rejoining head-quarters, for record in the adjutant's office. *Native camp-followers tried under* Regulation XX. A. D. 1810. (*See Section* 18, *Chapter* 1.) Confinement to be in the regular public guard, where the orders are strictly enforced. (*G. O. G. G. in C.* 19*th Aug.* 1824.)

SECTION 6.—REGIMENTAL COURT-MARTIAL ON THE LINE OF MARCH.

Regimental courts-martial on line of march.

These courts are held under the 10th clause of the M. A. 1832, to try "cases of mutiny and gross insubordination, or any offences committed on the line of march; and the sentence may be confirmed, and carried into execution on the spot, by the officer in the immediate command of the troops; provided that the sentence shall not exceed that which a regimental court-martial is competent to award; and a regimental court-martial may sentence any soldier to imprisonment with or without hard labour, (1) for any period not exceeding 30 days, and to solitary (2) confinement not exceeding 20 days." Corporal punishment is awardable.

This court may assemble at any hour.

(1) Not used in India. (2) Imprisonment alone.

SECTION 7.—DRUM-HEAD COURT-MARTIAL.

1.—A drum-head court-martial is held at the moment, and is one of those cases in which a court-martial, composed of five or three officers of the usual ranks, (1) may be held at any hour. Drum-head court-martial.

2.—The proceedings are summary, the crime (if there be time) is put in writing. The accuser may come forward, or be brought before the commanding officer by the provost-martial, &c. with the prisoner, and it may be necessary to try the crime, and on proof, punish the offender at once. He is heard and his witnesses, as well as those against him. The court and witnesses are sworn. Summary.

3.—The punishment is inflicted in front of regiment, brigade, &c. Punishment.

4.—The crime and sentence are afterwards entered into the regimental, &c. order book, and in the court-martial book. Entry of sentence, &c.

SECTION 8.—DETACHMENT COURT-MARTIAL.

1.—Detachment courts-martial in *His Majesty's Service* are authorized under the 86th Article of War, and consist of five and not less than three officers, (same rank as at a regimental court-martial,) though composed of detachments from different regiments, and held by the authority of a field officer to inquire into such disputes and criminal matters as may be brought before it, limited by the rules of a regimental court-martial, and the sentence to be confirmed by the superior officer on the spot, not being a member (or president) of the court. (1) Detachment court-martial, King's.

2.—*Company's.* Held under Section 14, article xiii. Articles of War, (4, Geo. iv. c. 81,) for the trial of warrant officers, (2) in cases not of so heinous a nature as to require investigation before a general court-martial; to be appointed by the general or other officer commanding the forces in the district where the corps shall be situated, or the offence shall have been committed, if in the territories of the said Company, and if beyond them, by the general or other officer commanding on the station; which courts-martial are to be held, and to proceed in the Company's.

(1) Captains in *King's*, or officers of eight years' standing in *Company's*, army, or a superintending officer of not less than 2 years, (*G. O. C. C. 17th December*, 1823,) may be a brigade court.

(1) And for offences not requiring trial by a district or garrison court-martial. (*Circular, No. 649, H. G. 23rd November*, 1829.)

(2) *Warrant officers* are conductors and sub-conductors of ordnance, and of the army commissariat, and in the department of public works; riding-masters, hospital stewards, and their assistants; apothecaries and their assistants. *Overseers* and their assistants are not.

nature of a regimental court-martial, not (Article xiv.) to consist of less than five commissioned officers, of whom not more than two shall be taken from the corps in which the warrant officer to be tried is serving. The president not under the degree of a field officer; two captains, and two subalterns. (3) If in the Company's territories, sentence not to be carried into execution, until a report made to the general or officer commanding in chief the forces of the presidency. If beyond the territories, not till confirmed by the general or officer commanding on the station; who may put the sentence into execution, or suspend, mitigate, or remit the same. Provided (Article xv.) that no court shall award corporal punishment; nor reduce (either general or detachment court-martial) such warrant-officer to serve in any inferior situation, unless he shall have been originally enlisted as a private soldier; and shall have continued in the service till his appointment to be a warrant officer.

SECTION 9.—APPEAL FROM A REGIMENTAL COURT-MARTIAL TO A GENERAL COURT-MARTIAL.

Appeal from Regimental to General court-martial.

1.—*King's.* Is given by the 16th clause of the M. A. 1832.

2.—*Company's.* By Section 16, 4, Geo. iv. c. 81.

What cases.

3.—Under the King's, Article of War, 121, (1832,) it is given in cases where a non-commissioned officer or private soldier shall think himself aggrieved by his captain, or other officer commanding his troop or company. If the appeal be vexatious and groundless, the appellant is liable to punishment by the general court-martial. In the Company's army, (Sec. 10, Art. 2,) he is liable to punishment at the discretion of the general court-martial, if the appeal be vexatious and groundless.

Mode of proceeding by petition.

4.—*Mode of Proceeding.* The non-commissioned officer or soldier should appeal by *petition,* which, through the regular channel, reaches the general officer of the division, but not direct to A. G. *(G. O. C. C. 23rd Sept.* 1826.)

When of right.

5.—*Cases of Right*—will appear to be those where the soldiers' *pay, clothing, messing, &c.* are concerned; and not an appeal against the sentence of a general court-martial, where he has been tried for a breach of *discipline,* &c.; for this is no grievance against his captain: it would rather be against the commanding officer. At the same time, if really injustice had been done by the decision of the regimental court, however loath a general officer might feel to call in question the court's

(3) Must not be of less than two years' standing.

decision, the broad principle of justice, and his exercise of a controlling authority might demand another trial. At the same time, in such cases, there is no *right* ; and unless very strong grounds were apparent from a perusal of the proceedings, it should be denied. (1)

Not to native troops.

6.—*Not allowed to the Native Troops*, Section 9, Art. 1. Native Articles of War do not give it. (2)

Mode of proceeding.

7.—*The mode of proceeding.* The 2nd Article, 10th Section, Articles of War (4, Geo. iv. c. 81,) states, "*but if upon a second hearing.*" So that the case is to be re-heard. In the case of Leonard, (3) the appellant addressed the court, and called evidence to prove the illegality of the regimental court's proceedings. (4) But in general cases, the appel-

Of right.

(1) Where allowed. 1. CASES OF PAY, &c. Robert Leeson, private 31st Foot, was permitted to appeal, a case regarding his *pay*. G. O. C. C. 15th November, 1826, (King's, 7th November, 1826.) The words were "*permitted to appeal.*"

Not right.

2.—CASES NOT OF PAY, *or regarding his Captain.* 1. 1817, private Leonard, E. R. tried on *complaint of a native* in that case, owing to alledged illegality in the proceedings, which were declared invalid, and confirmed by the Commander-in-chief, (Hastings,) G. O. C. C. 24th September, 1817.

2. Gunner J. Lowe, *disrespectful language* allowed. G. O. C. C. 13th December, 1829.

3.—Another case (not pay) in 1820, G. O. p. 393.

4.—Serjeant S. Johnson, 59th foot, *Embezzlement as pay-serjeant*, allowed. G. O. C. C. 3rd April, 1822.

5.—Private Renwick, E. Regiment, *stealing*, allowed. G. O. C. C. 13th October, 1823.

6.—Gunner Singleton, *theft*, allowed. G. O. C. C. 20th April, 1827.

7.—Private Raukins, E. Regiment, *concealing liquor*. G. O. C. C. 16th April, 1828.

8.—Private H. Budden, E. Regiment, *theft*, allowed. G. O. C. C. 8th December, 1828.

9.—Private Martin, 44th foot, *absence without leave*. G. O. C. C. 3rd August, 1829. (King's, 24th July, 1829).

The above cases show that it is not of right allowed, except in the cases of being wronged by his Captain. It must be confined to the merits of the case. It cannot point to the officer's character, that will be seen by the proceedings of the general court-martial ; and his conduct can only be submitted before a general court-martial. *Simmonds*, 67. If improperly allowed, it would tend to a soldier's appealing to delay punishment, and be injurious to the interests of the service. *Do.* p. 68.

(2) In the case of an appeal submitted in 1827, from Saugor division of the army, H. E. observed, that "he was unaware by what law or usage any appeal was admitted. That it was neither given by the Articles of War, nor by the usages of the service."

(3) Note 1, case 1.

(4) His commanding officer, adjutant of regiment, serjeant-major, and the mem-

lant should point out the illegality of the proceedings, and the court, having the regimental proceedings before them, should re-examine all the witnesses for the prosecution, *de novo* ; the conviction being founded on the evidence for the prosecution. (5)

Form of process. 1.—The appellant before the court, private John Leeson, H. M.'s 31st Foot, appeals from the decision of a regimental court-martial, held by order of Lieut.-Col. C., commanding 31st Foot at Dinapore, the 7th day of August, 1826, of which was,

President—Capt. K.

Members.

Lieut. A. Lieut. H.
Ens. W. Ens. W.

bers of the regimental court, as to his not having had a copy of his charge, and not being allowed time for his defence, &c.

Resolution of the court.—" It having been clearly proved, that although the appellant was placed on the Barrack Guard, on the evening of Friday, the 11th July, instant, he was not brought to trial before Tuesday the 15th July, and that during that time he was not furnished with a copy of the crime on which he was to be tried ; and it also appearing, that although the evidences against the appellant were *natives*, there was no regular sworn interpreter to the court, and the officiating deputy judge advocate general having declared his opinion, that the proceedings of the regimental court-martial are thereby rendered invalid and illegal ;—the general court-martial therefore rest their proceedings, until this opinion be submitted to the Commander-in-chief, and H. E.'s orders be received as to any further investigation.

(Signed) W. S. Heathcote, *Major, President.*

(Signed) C. T. G. Weston, *Offg. D. J. A. G.*

" I concur entirely in opinion with the D. J. A. G., that the proceedings of the regimental court-martial are invalid through the informalities noticed ; and I direct the prisoner Leonard to be freed from the charge."

(Signed) Hastings.

Cawnpore, Sept. 24, 1827.

(5) Tytler, p. 337 says, " The appellant sustains in conjunction with the J. A. the part of prosecutor, and the party that of defendant in the cause. The witnesses examined before the regimental court, are now regularly sworn by the J. A., are entitled to have the former testimony read over to them ; and they may confirm it, or vary it, or add thereto : and either party may cross-examine, &c. and produce new evidence."

May be examined, if the proceedings do not show the error, &c. I conceive the members of the regimental court may be examined as witnesses—their oath allows them to disclose the opinion of any member *before a court-martial.* Suppose a court were sworn by the *Company's* instead of *King's* Articles of War, in case of a king's soldier. (*G. O. C. C. 16th Dec.* 1829,)—or, *that* the court may have rejected evidence not so recorded on the trial ; the members must be examined if the proceedings do not show error, &c. hence I cannot agree with a writer who gives a contrary opinion. (*Kennedy, p.* 217.)

Opinion of the Court.—1. "The Court having patiently investigated the *complaints* made by Private J. L. against Captain B., is of opinion, with regard to the *first*, viz. that his objections to sign accounts for the month of June, in consequence of an overcharge of one anna for a pair of boots, is perfectly groundless. The entries in both *Day Book* and *Ledger* of the Company were exceedingly clear, and not the least appearance of an erasure in either."

Opinion of Court Regimental.

2.—"With regard to the *second complaint*, an overcharge of one anna for washing; the court is of opinion, that it is also groundless."

3.—"With regard to the *third complaint*, his claim to being credited for any tea or sugar that might have remained unconsumed after arrival at Dinapore; the court is of opinion, it is perfectly groundless."

"It appears to the court, that every opportunity to adjust his accounts has been given to the complainant, and every examination into his objections and explanation seem also to have been afforded."

"The charge for the tea and sugar on the river was the same throughout the regiment, and could not have been supplied at a more reasonable rate; and the court does not consider that any that remained could have been due to the men."

(Signed) Thomas Skinner, *Capt.* 31*st Regt. and President.*

"I approve,"

(Signed) Jas. Cassidy, *Lieut.-Col. Commanding* 31*st Foot.*

Finding (*of the general court-martial*). "The court having maturely weighed and considered the evidence produced on the appeal, together with what has been urged on the defence, (6) are of opinion, that the decision of the regimental court-martial, from which private J. L. 31st foot has appealed, is borne out by the evidence recorded on the proceedings, do confirm it, *viz. (repeated as above).* The court are further of opinion, that the appellant has not sustained his appeal, and that it is vexatious and groundless."

Finding of the general court-martial.

Sentence—"And they do therefore sentence him, the said J. L., private 31st foot, to receive seven hundred (700) lashes on his bare back, in the usual manner."

Sentence.

"The court cannot close its proceedings without adverting to the disrespectful and insubordinate tone and manner pursued by the

(6) In the case in Notes 1, 2, (4, 5, 6, 7, 8, and 9,) the court proceeded as a new trial. The words not "*tried a second time, unless in the case of an appeal, &c.* (cl. 16, M. A. and Section 16, 4, Geo. iv. c. 81,) proves that it is a new trial, as stated by Lt.-Col. Kennedy, p. 217. In *Leeson's* case he was not *tried*, but the finding is differently worded.

appellant during the course of its sitting, not only with regard to his observations as to what was occurring in court, but even on subjects beyond it, though continually admonished to that effect."

(Signed) G. WARDEN, *Lt.-Col. President.*

(Signed) JAS. STEEL, *Capt. Offg. D. J. A. G.*

Approved and confirmed, (Signed) COMBERMERE, *Gen. Com. in Chief.*

"To be carried into execution in such proportion as the commanding officer may direct." (7)

2.—*Captain dissatisfied with regimental court's acquittal of prisoner.* In cases relating to *pay, &c.* he has a right, (8) but in no other case.

SECTION 10.—GARRISON OR DISTRICT COURT-MARTIAL.

Garrison or district court-martial.

1.—It is held under the authority of clauses 9, 11, 15, M. A. 1832, (1) and 76 and 77 articles of war. The court may be composed entirely of officers of the regiment, or other officers be joined with them, officers of the general staff, &c. (2) The delegation of authority to hold such courts, though mentioned in article 76, is not stated in the warrant from the Commander-in-chief, to general officers. (3)

No delegation.

(7) In cases 6, Notes 1 and 2, the court sentenced 350, 50 more than the regimental court. In case 7, confirmed 300 L.; Case 8, 300 confirmed, and added 180 L. In case 9, 42 days' imprisonment and added 300 lashes.

I should say, if the regimental court, and sentence were confirmed, and the appeal *not vexatious or groundless*, the court should confirm only, and sentence to the same amount; that if vexatious and groundless, then I would confirm and add: and in some cases another punishment, for where in a case of contempt, a court had awarded lashes 1300 for the crime, and 600 lashes for the contempt, the Commander-in-chief remarked, the obvious impracticability of executing both awards, should have induced a different punishment for the *contempt. G. O. C. C. 29th Aug.* 1825.

(8) It is clear that if a soldier complained against his captain as to pay, &c. and it was decided that the complaint was well grounded, but which the captain conceived erroneous, he might submit to the commanding-officer the propriety of *revision* on certain grounds—here the court can take no fresh evidence. (*Clause* 16, *M. A. & G. O. C. C. 1st June,* 1815.) The captain should therefore be allowed to appeal, for as the case supposed stands, he could not in H. M. Service remain in the regiment, if proved knowingly to have sanctioned an overcharge against a soldier.

(1) First enacted in 1829, in lieu of the general regimental court-martial, with seven instead of nine officers. *Simmons,* p. 53.

(2) Except A. D. C. (Lieut. Lagothor, 1829,) Simmons, p. 54.

(3) Besides it is delegated by the *superior authority under His Majesty's warrant,* which from circular No. 658, 24th March, 1830, means *the Commander-in-chief.* That from general Sir E. Barnes, &c. to the general officer, or other officer not under the rank of a Lieut.-Colonel, *1st March,* 1832. To try for mutiny or desertion, &c.

2.—*Formation of Court.* The president is not to be under the rank of a field officer (unless one cannot be had), nor the commanding officer of the district, or of the prisoner's regiment; nor under the rank of Captain. (4) The members are usually 2, 3, or 4 Captains, and the rest subalterns. (5) There is no J. A. The regimental interpreter attends if required. (6)

Formation of court.

3.—*Previous Convictions.* Under article 84, are not to be inserted in the charge, but due notice given, and produced in evidence. The notice to be inserted at the foot or on the back of the copy of the charges, which are furnished to the prisoner previously to his trial, with a detail of the former convictions, which are to be brought against him, but not embodied in the charge. (7)

Previous convictions.

4.—*Prosecutor* usually the officer commanding the prisoner's company.

Prosecutor.

5.—Proceedings generally as before other courts-martial, sometimes the adjutant. G. O. C. C. (Bombay,) 20th March, 1832, par. 7.

Form as at other courts.

6.—*If prisoner found guilty, record the finding.* Then call in the adjutant to produce the former convictions, (8) read the crimes, sentences, and approval and confirmation, and being carried into execution, the court may inquire into the prisoner's *general character*, to enable it "*to make out punishment so as to satisfy the ends of justice with greater precision.*" (9) The prisoner is present, and may cross-examine the witnesses as to his *general character*, and it is said to produce other evidence to rebut *that* brought against him; (10) i. e. evidence produced after the finding.

Finding.

General character.

but no sentence of death, or transportation. May carry into *execution, suspend, mitigate, or remit.* No delegation mentioned. See also par. 8, G. O. C. C. 22nd March, 1832. (*Bombay.*)

(4) Warrant, vide Note 3.

(5) Not under two years, if in the Company's Service. The regiment or staff they belong to, to be stated. Circular, H. G. 6th April, 1831.

(6) Clause 15, M. A. 1832, and Circular, No. 656, 24th March, 1830.

(7) G. O. C. C. 20th July, 1833.

(8) D. J. A. G. should give the adjutant copies, attested, of all confirmed crimes and sentences, or the adjutant gives them from the register book of courts-martial. If regimental convictions, he produces the trial, or attested copy, or takes them from the court-martial register book, in which all are entered.

(9) Circular, H. G. 24th February, 1830; Simmons, 197. The J. A. G. 26th May, 1830, stated to Major General Ross, "that former convictions were introduced upon the principle of the recently improved acts of criminal law, where, *after a conviction* for the particular offence, although of a minor description, it is permitted to give evidence afterwards of previously repeated offences, in order more accurately to assign the proper degree of punishment." *Simmons*, 197. (2).

(10) *Simmons*, 198. A prisoner is always allowed to produce evidence as to

Sentence. 7.—*Sentence* must not be death, or transportation, (see Article 77.) Not more than 300 lashes, or imprisonment, solitary or otherwise, (11) in such place as the court may appoint; but, it is better to leave the "*place*" to be directed by the general officer.

Recommend to be discharged with ignominy. May recommend to be discharged with ignominy, when the proceedings are sent to the adjutant general of His Majesty's forces, first approved and confirmed by the general officer. (12) The date of confirmation to be recorded on the proceedings. (13)

Published in division orders. 8.—Published in division orders.

Original proceedings to J. A. G. 9.—Original proceedings sent to J. A. G. for transmission to the J. A. G. of His Majesty's forces, in England. (14)

Amicus curiæ. 10.—*Amicus curiæ*, or friend to assist the prisoner, allowed. (15)

No copy to prisoner. 11.—*Copy not allowed.* The 17th clause of the M. A. 1832, only

general character, and he may prove good conduct; as, by the officer of his company, or the adjutant, &c. since his last conviction, which may have been a long time back.

(11) General officers are governed in their confirmation by the confidential circular, No. 5,113, A. G. His Majesty's forces in India, 5th March, 1832, as to the 3rd, 4th, and 6th pars. Circular, H. G. 24th June, 1830.

(12) Case of private Morriessey, 29th March, 1832. The sentence, in this case, requiring the confirmation of the Commander-in-chief, proceedings transmitted to the Adjutant General His Majesty's forces in India, to obtain the orders of H. E. (Signed by general officer.) Discharge with ignominy.

(Signed) E. Barnes,
Commander-in-chief in India.

Form of Discharge.—G. O. H. G. 6th August, 1829. The regiment is paraded, the several crimes he has been guilty of to be read, and the order for his dismissal and his discharge (which contains the crimes). The buttons, facings, lace, and any other distinctions are then to be stripped from his clothing, he is to be marched down the ranks, and trumpetted or drummed out of the barracks or quarters of the corps. In this case, it was ordered to be immediately done on receipt of the order.

In such case, the orders of Government are, that the prisoner be sent to the presidency under charge of a military guard, subsistence being furnished by the commissariat, and be delivered over to the town-major. (*Military Secretary to Government, No. 381, 22nd January*, 1830.)

(13) Circular, No. 642, A. G. His Majesty's forces, 11th June, 1832. The circumstance being required to be noticed in the monthly returns of courts-martial.

(14) J. A. G.'s circular, No. 2,600, 28th April, 1831; clause 17, M. A. 1832.

(15) "Though he may be refused any particular individual who has not obtained leave. But the prisoner should be allowed one, as he is at a general court-martial, and the same principles of justice give it in the former case." Remarks on a soldier having been refused the services of another soldier to assist him. G. O. C. C. (*Bombay*,) 20th March, 1832, par. 7.

gives the copy of the proceedings of a *general* court-martial to a prisoner.

12.—*No erasures*, or interlineations; nor to be carelessly or inaccurately written. (*Cir. H. G. 6th April*, 1831.) No erasure.

13.—May mark a *deserter* (D.) Clause 11, M. A. 1832. Deserters. (*D.*)

SECTION 11.—DETACHMENT COURT-MARTIAL ON SERVICE.

1.—Under clause 12, M. A. 1832, this court is authorized to be held, and to consist of three officers, whose rank is not stated, so they may be of the same rank as at a regimental court-martial; that is, for the trial of a non-commissioned officer or soldier: but, if for the trial of an *officer*, who is also triable by this court, then the president should be a field officer, or (clause 6) may be a Captain. But, if a field officer were tried, the members must be Captains. (Article 71.) The officer to hold this court must be a field officer. (Clause 5, M. A. 1832.) The 12th clause gives the power of *death*, so any crime, *murder*, &c. may be tried; but all sentences must be confirmed by the Commander-in-chief. The whole powers of a general court-martial are given to this court. Detachment court-martial on service. Kings. To try officers, N. C. O. and soldiers.

2.—*Company's Army.* The 20th section, 4, Geo. iv. c. 81, gives the same authority to try *any* crime, *committed by any non-commissioned officer, or soldier, or other person*, serving with or belonging to the Company's army, which does not include officers. While (King's), clause 12, does include them by the words "by any person serving with or belonging to His Majesty's armies."(1) Under Section 14, Article 2, the president may be a Captain, if no field officer can be had. The members might be officers of two years' standing. Company's. Only N. C.O. and soldiers.

3.—*Remarks.* "It is evident that a detachment is intended which has not a daily intercourse with head-quarters. (2) The commanding officer need not have a warrant; but it would seem that the president should have one." When a district detachment.

SECTION 12.—GENERAL COURTS-MARTIAL.

1.—*Authority. King's.* 71, *Article of War*; 5th clause of the M. A. 1832, by which, acts committed abroad may be tried in England:—"in any other part of H. M.'s dominions where he may have come after the commission of the offence, as if the offence had been committed where such trial shall take place." The 143rd Article of War renders King's officers and soldiers amenable to the Company's Rules and Articles of War, "not at variance with H. M.'s Annual Articles of War;" Authority, Kings.

(1) Simmons, p. 39. (2) Simmons, p. 40.

this refers to Section 2, 4, Geo. iv. c. 81, for the trial of *murder* and other crimes, committed at places 120 miles beyond Fort William, Fort St. George, or Bombay.

Authority. Company's. 2.—*Authority. Company's.* Section 14, Art. 1, and Section 2, 4, Geo. iv. c. 81, in cases of *murder*, &c. &c.

Under 9, Geo. iv. c. 74. 3.—*Under what laws murder*, &c. are tried. The Act, 9, Geo. iv. c. 74. (1)

(1) The Section 2, 4, Geo. iv. c. 81, says, "Capital by the Laws of England;" but it is obvious, that this Act (9, Geo. vi. c. 74,) affects officers and soldiers, as well as other persons, tried before the Supreme Court. By the words of Section 1, "shall extend to all persons and places," and Section 127, "that all persons whether *British* subjects or others employed by or in the service of His Majesty, for all crimes and offences committed by them, in the same manner as persons employed by or in the service of the said United Company." It is most clear that officers and soldiers before the Supreme Court are tried under the Act, and it never could be intended that a general court-martial sitting to try the same crimes should be governed by *other Acts*.

Construction of Acts of Parliament. One of the rules for construing Acts of Parliament is, "*that statutes relating to the same subject ought to be construed together.*" Sir J. Frank's judgment in the case of *Gopaul Duloll* v. *J. Bagshaw and others*, Calcutta Supreme Court, 18th March, 1833. Colonel Kennedy in his last work (1832), p. 27, states, "that general courts-martial cannot try counterfeiting coin under Sec. 73, 9, Geo. iv. c. 74, but must make over the soldier to the civil power." Now, it seems clear, that the 102nd article was framed to explain what was before done by a circular from the H. G. 12th December, 1807—i. e. that general courts-martial were not to sentence for *murder*, &c. a *military* punishment, or to direct a murderer to be *shot*, instead of being *hanged*. But neither the 102nd article nor Section 2, 4, Geo. iv. c. 81, *forbid* the soldier's trial by a general court-martial, but *command* it, if at places beyond 120 miles from Fort William, &c.

The *preamble* to the Act states, "Whereas it is expedient that many wholesome alterations made in the Criminal Law of England, and it is expedient that some of the said alterations should be extended to the British territories under the government of the United Company, &c." It is an Act "to *improve* the Administration of Criminal Justice in the East Indies," and extends to *all persons and places*; and it was declared in the House of Commons, by Mr. O'Connell, and not contradicted, (18*th May*, 1829,) that "there is no rule of law that a general recital shall not explain a particular enactment."

It is true, the 126th Section repeals the oath laid down in Sections 27, 28, and 57, 4, Geo. iv. c. 81, and not the 2nd Section, "Capital by the Laws of England." Still the preamble extends a new enactment to all British subjects in His Majesty's or the Company's service. Neither are all the Laws of England in force in India, and if not, the words "*Capital by the Laws of England*" cannot be construed as extending them; and if not all, what part?

The clear object of the Act is to give India the benefit of a new law, and if the intention of the legislature is to be considered, the *preamble* speaks at once that intention, and it never could have been contemplated, that an officer or soldier should

4.—*By whom held.* The general officers of divisions may hold them without reference to head-quarters, under their warrant, which may be granted to any field officer. (2) By whom held.

5.—Charges should be simple, divested of the intricacies of civil law. The facts to be stated in plain terms, and without technical formalities. (3) A copy to be given to the prisoner, and in all practicable cases, a list of the witnesses for the prosecution. (4) The substance of the accusation, before charges are finally framed, should be communicated to him. (5) Sometimes framed upon deposition taken before a magistrate. (6) Charges.

If any additional charges, a copy to the prisoner. (7) If due notice be given, they may be altered any time before arrangement. Not made out by *civil* persons. (8)

6.—*Prosecutor.* "If the crime be of a general nature, and not an injury to an individual, to call on the person preferring the charge to appear as prosecutor, and the J. A. is to submit the expediency, generally, of the officer commanding the corps or department to which the prisoner may belong, being required to sustain the prosecution." (9) Must be a *military* person. (10) Has been the president of a Court Prosecutor. A military person.

be tried by *one* law before the Supreme Court, and by *another* by a general court-martial; for how cruel it would be to place a military person in such doubtful circumstances, when it is a rule that in crimes of a civil and criminal nature, or those triable by the criminal courts of the land, the soldier does not lose his civil rights, nor those laws which govern the courts of law. When tried by a general court-martial, the same punishments prevail. One court stands in the place of another, and the intention of the legislature is expressed in the preamble, and the "*construction of the statute must follow from that title.*"

(2) Clause 5, M. A. 1832; Sec. 15, 4, Geo. iv. c. 81.

(3) G. O. C. C. 25th Nov. 1826, particularly in military crimes. In cases of *murder*, &c. consult Section 16, Index to the Act 9, Geo. iv. c. 74, and use such requisite words as *wilfully, unlawfully, malice aforethought,* &c. as are stated in the section the crime comes under. *Theft* must not be charged generally as theft; time, place, and some of the articles stolen, must be stated. G. O. C. C. 20th April, 1827.

(4) By the J. A., staff-officer, or the adjutant, as the case may be. G. O. C. C. 23rd Sept., 1826.

(5) G. O. C. C. 11th April, 1827.

(6) G. O. C. C. 20th Sept., 1827.

(7) Simmons, 131.

(8) M. S. J. A. G.'s Office, p. 147.

(9) Circular, J. A. G.'s Office, No. 178, 15th June, 1832.

(10) G. O. C. C. 26th July, 1827.

of Inquiry. (11) Sometimes there is a joint prosecutor. (12) In cases of a *civil* person being complainant, he becomes the *principal* witness, and after giving his evidence, should be allowed to remain in court, that the J. A. may refer to him; but he can only cross-examine the witnesses through the J. A. (13) Nor can such civil person make a reply to the defence.

Witnesses. 7.—*Witnesses required from a distance.* See par. 10, SECTION 2, *ante.*

Evidence. 8.—*Evidence.* See SECTION 1, ante.

Oaths. 9.—*Oaths.* See SECTION 3, ante.

Interpreter. 10.—*Interpreter.* See SECTION 4, ante.

Time of assembly. 11.—*Assembly published in order.* May be at any mess-room. (14)

Notice. 12.—Notice of day and place of meeting to the prisoner.

Composition of court. 13.—*President and number of members.* Usually 15. (15) Should not be those who have been members on a Court of Inquiry. If they have given an opinion, are clearly not to be members. (16) The president

(11) Major-General Sir C. Dalbiac, President of the Court of Inquiry, 16th November, 1831, and was prosecutor on the trial of Lieut.-Col. Brereton and Capt. Warrington, for the Bristol riots, and arising out of the *Court of Inquiry*, (*which court sat with closed doors.*)

(12) G. O. C. C. 8th May, 1829.

(13) G. O. C. C. 26th July, 1827.

(14) G. O. C. C. 14th Dec., 1822.

(15) King's, not less than 13. Whether officer or soldier. 71st Article of War. And it requires 13 in cases of *death* or *transportation*; that is, if held *within* the Company's territories. *Company's*, Sec. 19, thirteen, if on the trial of officers; and nine, if on that of a non-commissioned officer or soldier. If *out* of Company's territories, may consist of seven only. By Section 22, in cases of sentences of *death* or *transportation*, 13 officers; unless held out of the provinces, when seven may (Section 19) form the court.

(16) *Tytler*, 224; *Simmons*, 144; but may be, if no opinion has been given. *Kennedy, p.* 30.

It seems to me, that whether an opinion be given or not, a member of the Court of Inquiry must be biassed in favour of the prosecution; his mind is formed, and whether he has declared an opinion as member of the Court of Inquiry, or as an individual not being a member, he is equally prejudiced, and why should a man's saying in one case more than another affect the question; if it be replied, because as member, he knows the evidence produced—the other person only by hearsay, still the member must form an opinion; and as this is a rational result of his being a member, why not consider him as exceptionable in both cases. If he does form an opinion, and signs his name to a paper purporting grounds for the prisoner's trial; or if, in another, he does not, but tells persons there is no doubt there are grounds for a trial, where is the essential difference? It is desirable to decide the point; and if that he can only be excepted, if he has given an opinion as member of a Court of Inquiry against the prisoner, (the court may not all

is usually a field officer, but may be a captain, if major, &c. is not to be had. (17) All officers on full pay; officers of the general staff, in the receipt of full pay on the staff, though on half-pay of their regimental rank; and brevet officers, whether on half or full pay of their regimental rank. (18)

14.—*Interpreter.* If native witnesses, see *Interpreter, Section* 4, ante. Interpreter.

15.—*Court met,* (*Amicus curiæ* allowed.) Court met. Amicus curiæ Heading of proceedings.

1.—Proceedings of an European (or *native*) general court-martial, held at the mess room (19) of ——— regiment, at Kurnal, on —— day of ——, 1833, by order of Major General ——, commanding —— division, by virtue of a warrant under the hand and seal of General the Honorable Sir E. Barnes, G. C. B. Commander-in-chief in India, for the trial of ———, and of such other prisoners as shall be duly brought before it.

President. Court.

Major ——, —— Regiment.

(Members.)

2.—Capt. ——, —— Regiment.	3.—Capt. ——, —— Regiment.
4.—Capt. ——, —— do.	5.—Capt. ——, —— do.
6.—Capt. ——, —— do.	7.—Capt. ——, —— do.
8.—Capt. ——, —— do.	9.—Capt. ——, —— do.
10.—Lieut. ——, —— do.	11.—Lieut. ——, —— do.
12.—Lieut. ——, —— do.	13.—Lieut. ——, —— do.
14.—Ensign ——, —— do.	15.—Ensign ——, —— do. (19)

Capt. ——, D. J. A. G. —— division, conducting the trial. (20)

Lieut. ——, —— *Regiment, Interpreter.* (21)

agree in the affirmative; and though all sign, the dissentient member may assign his dissent, (*see Court of Inquiry, chap.* 3;) and to prevent inconvenience, never to call for any opinion, where a trial may be the result—and only in cases of *arbitration.*

(17) King's, Article 71; Company's, Section 14, art. 2.

(18) Brevet-majors who have army rank superior to their regimental commission, and may be employed by His Majesty to command a force, &c.

(19) All members of six years' standing, if practicable, G. O. C. C. 25th June, 1832, and all young officers ordered to attend, who are of less standing. If of five years, it gives the age of a juror, who must be 21 years of age. You require more experienced officers in case of *murder,* &c. than in one of *mutiny,* in both of which *death* may be the sentence, because cases of *murder* are more complicated than those of *mutiny* and other ordinary military offences.

(20) If one to officiate, the general officer must give him a warrant. The J. A. sits on the left of the president, the members right and left, half being opposite to, and facing, the other half.

(21) See Section 4, *Ante.*

Prisoner brought into court. 3.—The prisoner brought into court, and called to the bar by name. If irons on, take them off, unless danger of escape, and placed opposite the president.

Read orders. *Read* division orders appointing the court and members, and station orders.

2.—Warrant of the Commander-in-chief to the general officer.

3.—President's warrant.—J. A.'s warrant.

Challenge. King's. 4.—*Court sworn.* If by the *King's* Articles of War, on the trial of a Company's officer or soldier, illegal. (*G. O. C. C.* 16*th December*, 1829.) *King's.* See Schedule, p. 93, M. A.

Company's. *Company's.* Section 28, 4, Geo. iv. c. 81, and except that, in cases of a *Company's* officer, &c. instead of the oath taken upon the Holy Evangelists, that is repeated by Section 126, 9, Geo. iv. c. 74; Section 37 allowing any form instead thereof, may be sworn according to the forms of their respective religions. The president sworn first, and may be by challenge. (Lieutenant-Colonel Johnston's Trial, p. 2.)

President sworn. Challenges. At Captain Warrington's trial, the same court which sat on Lieutenant-Colonel Brereton's trial (though discontinued) were members of Captain W.'s court-martial. (*See No.* 15, *ante.*)

If the prisoner challenges, the member withdraws, (*M. S. J. A. G. O. p.* 91,) and the court is cleared, and when opened, the member is informed he is to retire from the court as a member. If challenge disallowed, he resumes his seat.

Of president. If the president be objected to, on good grounds, the court must adjourn, and report the same, and the next senior member may be appointed, and a new warrant granted, (*Simmons, p.* 150,) if a Major; if not, and procurable, a Major should be appointed.

Members sworn. J. A. sworn. *Interpreter*, when required.

If no challenge, record.

Jurisdiction as to place. 5.—*Jurisdiction.* The warrant gives jurisdiction to the general officer over all "officers and soldiers, European or native, &c. under your command." And for the trial of offences committed previous to and after the general officer assuming command. For the trial of an officer or soldier, for a crime committed within the precincts of a command, distinct from that to which the accused may have been removed subsequent to the offence, a special warrant is necessary. (22) A court has declined to enter into the examination of a charge, upon the express grounds that it arose out of the limits of the command of the general who convened it, which was confirmed by H. M. (23)

(22) Sir C. Morgan, J. A. G.'s Note to Tytler, p. 218.

(23) Lieut. John Read, Sept. 1799. *Simmons*, 5.

Limitation as to three years, and two years after the removal of the impediment to trial, by absence, &c. (24)

Garrison or district court-martial.

No delegation.

Another point of jurisdiction is, whether the case is triable under Section 2, 4, Geo. iv. c. 81; (25) as to whether the charges include acts of more than three years' standing; whether "by reason of his having absented himself, or of *some other manifest impediment*, he shall not have been ameable to justice within that period." Then "not exceeding two years after the impediment shall have ceased. This impediment (for absenting himself implies the impediment by the *prisoner's* act,) means one *not caused by the prisoner*. Thus, in Lieut.-Col. Johnston, tried under a warrant dated 3rd April, 1811, on a charge, in that warrant, that he did, &c. at N. S. W. on or about the 26th Jan. 1808, which was more than three years before, a member objected: the J. A. G. *(Sutton)* advised, that Captain Bligh should read his opening speech, and then he asked, on what day did you arrive in England? (Printed Trial, p. 5,) *read.* Captain Bligh *sworn*, p. 11, arrived in England on 25th October, 1810. *J. A.* it is clear that Major Johnston had left the colony before January, 1810, but was *in* the colony in March, 1809. There are two parties to a trial, and the court will see that those two years cannot be expired, as far as the *prosecutor* is concerned, because he only arrived in England on the 25th October, 1810. p. 12.

Jurisdiction as crimes under 4 Geo. iv. c. 81, and as to limit as to time.

6.—*Charges* read. Question. Do you acknowledge yourself to be properly described in the charges? A. *(Charges entered.)* Charges.

4th Charge.—"For speaking with contempt, and in a manner highly disrespectful of his superior officers, at *various times.*" James's Decisions, p. 48,49. A general officer is appointed by the Government on the staff, and posted to a division by the Commander-in-chief, say to A. If troops belong to another division, B, and are placed under such general officer by the orders of the Commander-in-chief, they are part of his division or command. If the troops of B are marching through that of A, the general officer of B does not lose his control or command. With respect to discipline, the case stands thus:—If a soldier of B commits murder in the division of A, the general officer by a report to head-quarters can either get a special warrant, or the order of the trial in G. O. would be sufficient. If, it be a case triable by any court *less* than a general court-martial, the articles of war give the trial by a detachment, or line court-martial, and he would be authorized to try the soldier. But general courts-martial being by warrant in the case supposed, a special warrant, or G. O. is required. In 1817, a case of a havildar, Seharanpore P. B., Meerut division, tried at Cawnpore.

(24) Clause 20, M. A. 1832. Section 71, 4, Geo. iv. c. 81, which give five years after the prisoner has become amenable, if the case has been reported to the Court of Directors by the Governor General in Council, &c.

(25) Not, if *within* 120 miles, &c. if for *murder*, &c.

Caution as to charges of mutiny.

MUTINY. A man charged with having told the *adjutant*, while in the execution of his duty, (visiting the cells, in which the prisoner was undergoing dry punishment,) "that he would shoot *me* when he got out, and that he would have done so before, had he not been confined to the log," or words to that effect. Sentenced to 18 months' solitary confinement. *Not confirmed*. The Commander-in-chief concurring in opinion with the J. A. G. that the fact charged in the crime against the prisoner, and proved in evidence, does not amount to the capital offence of "*Mutiny*," and ought to have been designated as *mutinous conduct* only. There were other objections—*former convictions* given in evidence against him, which do not apply to the *Company's* service. (*G. O. C. C. 19th June*, 1833.)

Plea.

7.—J. A. Are you guilty, or not guilty? A. (26)

Opening address.

8.—J. A.'s or prosecutor's opening address, which, where there are two prosecutors, on two branches of the case, may be on the introduction of evidence upon each, (27) by prosecutor, (J. A.) and joint prosecutor. Prosecutor may be sworn, and his statement be made evidence. (28)

Evidence on each charge.

9.—*Evidence upon each charge*. The best course is, to examine witnesses upon each charge separately, if they relate to different points, or transactions. The letters, or written evidence, may be proved and sworn to all at once, but that applying to each charge, should either be recorded

(26) If he refuse to plead, court may order a plea of "*Not Guilty*" to be entered. Sec. 15, 9, Geo. iv. c. 74, which has the same effect, as if he had pleaded it. He may plead a former acquittal, attaint, convict, non-jurisdiction, pardon, or a *misnomer*. The court may cause the charge to be amended, and call upon the prisoner to plead thereto, Section 11, 9, Geo. iv. c. 74, and where at a general court-martial, the prisoner was styled *John*, and said his name was *James*, the J. A. altered it to *John* in court. (*G. O. C. C. 10th Oct.* 1832.) Serjeant James Cooper, Pioneers, tried for murder. But if the charges are illegal and wrong, the court must adjourn and report, &c.

(27) On Lieut.-General Sir J. Murray's trial, the J. A. made an address upon charges; 1st and 2nd trial, p. 3; and Rear Admiral Hallowell, joint-prosecutor, on the third; p. 74. G. O. H. G. 17th Feb. 1815. An objection was made by Dr. Lushington, in the petition he presented from Captain Robinson, tried at N. S. W., (*H. G. 27th March*, 1833,) that the J. A. had been a member of the Court of Inquiry on his conduct—"as at variance with the usages of the army." I never heard of any such objection; and as the J. A. has no vote, I cannot see the force of the legal objection, for J. A. do conduct Courts of Inquiry and then the trial. (*See Note* 11.) *India Gazette*, 9th August, 1833. See Note 11, where the *president* was prosecutor, while the J. A. is not always president.

(28) Sir J. Murray's trial, p. 194, or so much as he swears to.

in its proper place, or be placed in an appendix, and is marked A. B. C. or 1, 2, 3.

The best course is, to allow the witnesses, if natives, to tell their story, as questions perplex them. Let the interpreter, in *important* cases, take down his story; the interpreter repeats it to the J. A., but any extraneous matter need not be taken down. Never let any one interfere with the witness. The J. A. or prosecutor puts his questions. The prisoner, next; then the J. A. re-examines; if any arises out of the cross-examination, then the court. If any question strikes a member, let him hand it up to the president, but if the J. A. who has framed his mode of putting questions, be interfered with, it may distract his attention, and usually retards the proceedings. It is due to the J. A. to give him credit for putting proper questions; if he omits them, then, let the court supply the deficiency. The president's duty is to preserve order, *and to clear the court, if any discussion takes place.* (29)

President's duty.

Course of examination.

Preserve order.

If a prisoner puts any question, though it be overruled by the court, it should be recorded. A witness should not be allowed to read his evidence, before cross-examined. (30)

No discussion in open court.

If a court record their objection to the admissibility of any evidence, or question, the Commander-in-chief sees the propriety, or otherwise, of the court's conduct. (31)

(29) p. 94. (*King's.*) Articles of War. "All the members to behave with decency; to take their seats according to rank, and not to quit them without permission of the president; who will clear the court on any *discussion*, and in case of intemperate words used by any member of the court, direct the same to be taken down in writing, and reported to the officer ordering the court-martial to assemble; no reproachful words are to be used to witnesses or prisoners; and the president is hereby held responsible that every person attending such court be treated with proper respect." This should be applied to the Company's service. It is no court without the president, the president challenged at Meerut in 1810, and quitting the court. J. A. G.'s (Calcraft's) opinion.

His duty to attend to the evidence, G. O. C. C. 6th September, 1826. This relates to the parties, and irrelevant, &c. evidence. The president (alone) cannot interfere with the charge or evidence. *Simmons*, p. 55. The court decide every thing. If it be a question, whether such and such course shall be adopted, and the court be divided in opinion, "the custom of the service, and the necessity of the case, justifies the decision of the question on the side on which the president may vote." *Simmons*, 118.

(30) See Captain Robinson's case, Note 27. Other objections were made by Dr. L. the taking evidence in a mass, where there were seven or eight charges, and allowing a witness to read his examination in chief before cross-examined.

(31) If the court refuses to record a prisoner's objection, it decides on the case

1st witness prosecution. 10.—1st *Witness, prosecution.* 1st, called, *sworn,* and examined in chief, by J. A. or prosecutors. (32) 2nd; cross examined by prisoner; 3rd, re-examined by J. A., &c.; 4th, examined by the court. (33)

Witness may refer to notes, but not read them as evidence; and should be asked when he made them. (34)

2nd witness prosecution. 11.—*2nd Witness for prosecution,* (as above.)

Adjourn. 12.—Adjourn at 4 P. M. if *European* court, at 3 P. M. if *native,* or at any previous hour. *Record adjournment.* (35) Prisoner remanded to confinement, if a soldier.

2nd day's proceedings re-assembled. 13.—The court met this day, *second day's proceedings,* at 11 A. M. pursuant of adjournment of yesterday. President and members all present. Prisoner brought into court. (36)

Read over proceedings. 14.—Read over last day's proceedings, if necessary.

Prosecution closed. 15.—If no further evidence, J. A. G. here closes the prosecution.

Time to prepare defence. 16.—Private ——, when will you be ready to enter upon your defence. Prisoner wishes two days, or more. —— Granted by court. (*Record.*)

Adjourn. 17.—Adjourn at 4 P. M., till Monday, at ——— A. M.

3rd day's proceedings re-assembled. 18.—Monday, &c. *third day's proceedings.* The court met this day at —— A. M. President and members all present. Prisoner brought into court.

Read over proceedings. 19.—Read over the proceedings to the prisoner, in some cases, if he wishes it, to assist his memory.

1st witness defence. 20.—1st witness for defence, called, *sworn,* and first examined in chief by prisoner; 2nd, cross examined by J. A.; 3rd, re-examined by prisoner; 4th, examined by court. (37) So on with other witnesses.

Defence read. 21.—*Defence read* by prisoner, or J. A. (38) If there be any scur-

without the chance of an appeal to H. E. and becomes what the *Star Chamber* was, and courts are not infallible.

(32) And by joint prosecutor, if one.

(33) If a prisoner objects to a *J. A.* put a question after *he* has closed his cross-examination, and if it be a *material* question, the court are bound to put it, as from the court, and the court frequently put questions for the prisoner. See case 3, *murder.*

(34) If long after the transaction, are entitled to little credit.

(35) Call over the names of the members, and report to president all present. If any sick, medical certificate, then record. " Except ———, reported sick."

(36) May be for various causes put off; but if (*as in case* 1, *note* 13,) the court do not meet that day, an order must be issued for it to re-assemble.

(37) It is an advantage to the prisoner to examine his witnesses first, and then read his written defence, and comment on the whole evidence.

(38) If the prisoner does not, the J. A. is the proper person. A friend may, but no regular counsel. *Whitelocke's* trial, p. 763.

rilous matter, or any attack upon third persons not before the court, the court should not allow it to be read, or entered on their proceedings. (38)

22.—*Questions of opinion* are necessarily often put and answered, particularly to those witnesses who can judge as to the propriety of any measure, such as the failure of an expedition, &c. (39) or to medical and professional men; and on either the prosecution or defence. Questions of opinion.

23.—*Contempts.* All court have the power to punish contempts, (40) and to exhibit charges and pass sentence for such contempt. (41) Contempts.

24.—*Defence* closed. Defence closed.

25.—*Reply* is allowed to the J. A., and sometimes adjourn to prepare it. (42) Reply.

26.—*Summing up.* The J. A. is entitled to summing up. It is the duty of the judge to a jury; and upon the same principle, if the court do Summing up.

(38) Officers have been tried in consequence. G. O. C. C. 25th July, and 4th September, 1821. Every license is allowed, not affecting the dignity of the court. *Simmons*, p. 165. Scurrilous defences have frequently been remarked on by Commander-in-chief, G. O. C. C. 25th March, 1830, and G. O. C. C. 15th April, 1833, where H. E. said "*much indulgence is always allowed to prisoner in making his defence, but he should be restrained from using unbecoming language, and advancing actual charges in the course thereof. There were other parts highly objectionable, and which ought to have been put a stop to by the court.*" If a prisoner has any well-founded charge arising out of the course adopted against him, his proper course is, to exhibit charges;—his defence not being evidence against others, (though what a prisoner says is evidence against himself.) Neither the court or Commander-in-chief can act on it.

It is open to the prisoner by argument, and reasoning, to comment on the evidence, and a cause must be bad indeed, if fair argument and a just cause do not convince 13 officers: and the old Roman proverb should be recollected, that scurrilous language applied to any one, affects not that person till proved, and is thrown back on the speaker or writer. Nothing shows more want of talent, than the use of such language. Evidence and high probabilities alone convince the reason.

(39) Phillips, vol. i. p. 439, Whitelocke's Trial, p. 498, 526, 531; Murray's Trial, 422, 458; Quentin's Trial, 178, &c.

(40) Article of War, (*King's*,) 94, to prevent all discussion in open court.

(41) Last case, G. O. C. C. 25th September, 1832. The court being cleared, the J. A. is ordered to make out a charge. Court re-opened, and read. Proceed with trial. The court find him guilty or not guilty, and then find as to the contempt, on which they pass their opinion, and sentence distinct from the other sentence, and though acquitted of the other charge, the contempt may be punished. Where corporal punishment of a large amount is awarded, the sentence for the contempt should be some other punishment. (*G. O. C. C. 7th October*, 1825.)

(42) A. G. L. 3rd November, 1822. But disapproved of where a defence contained neither evidence, nor new matter of any kind. (*G. O. C. C. 16th December*, 1829.

not require it, it should not be read. This presumes the court to be satisfied as to the guilt, or innocence, of the prisoner. If the J. A. thinks the court mistaken in their view, he is entitled to read it, because the J. A. has to satisfy the Commander-in-chief that he has done his duty. (43)

Finding.

27.—*Finding.* (44) By a bare majority, except in cases of *murder*, or where a sentence of death must be the sentence. If 15 members, and the case be murder, 10 must concur in the finding. (45)

Former convictions.

28.—*Former convictions.* (Which are not in the charge given in evidence, see Section 10,) not in the *Company's* service!

Sentence.

29.—*Sentence* requires a majority, (or ⅔rds, or nine out of 13, in case of *murder*. If one member votes 1000 lashes, the highest number allowed, (46) one 900, two 800, two 700, two 600, and seven 500 lashes, the majority are in favour of between five and 600. Therefore, say to each member again, shall it be 600? If not 8; again, shall it be 550? The same as to imprisonment.

There must not be two distinct punishments for the same offence. (47) If there be a *military crime*, and a *felony* charged, must sentence separately for the *felony*. (48) Suspension from rank and pay improper, if an officer be in debt. (49)

In cases of *theft*, also to refund money stolen (by stoppages). G. O. C. C. 20th April, 1827. Cannot sentence an European staff N. O. to be remanded to his former corps; may recommend his removal from his situation. (50)

(43) In the case of the judge and jury, it is different; the judge's decision of the case is final; but, a general court-martial may have its sentence *revised*. The reply or summing up should not be violent, or court should interfere. (*G. O. C. C. 11th April*, 1827, *and* 25*th March*, 1830.)

(44) The court from the evidence before them are of opinion, that the prisoner ———, regiment, is guilty of the charge exhibited against him.

(45) Or, if a bare majority, it may, (as the case may be,) be manslaughter, or an acquittal. It occurred at a trial of a man charged with *murder*. It was recorded that eight out of 15 found him guilty, and seven guilty of manslaughter, and the proceedings were confirmed by the Commander-in-chief and the G. G. in C. (*G. O. C. C.* 23*rd August*, 1833.) *Simmons*, 182. 2-3rds must concur, or nine out of 13. The finding must be on each charge.

(46) G. O. H. G. 30th January, 1807, *Simmons*, 218.

(47) G. O. C. C. 30th September, 1815, and *Simmons*, 257.

(48) G. O. C. C. 24th July, 1826. It may happen that he may be wrongly convicted of one.

(49) G. O. C. C. 8th July, 1826.

(50) G. O. C. C. 23rd September, 1826.

All must vote as to punishment.

All must award *some sentence*, though they acquit: the *majority* governs the *minority*. (51)

Suspension. No date from. (52) Improper in time of war. (53) Reprimand to a non-commissioned officer improper. (54) No general service. (55) If a majority as to two punishments, then take the mildest. (56) In the case of *murder*, may recommend to hang in chains after execution. (57)

Transportation. Sentence.

Transportation to N. S. W. (58)

Sentence. The court having found the prisoner guilty of the crime exhibited against him, *which being in breach of the Articles of War,* (in military cases,) (59) do sentence him, the prisoner ——, —— regiment, to imprisonment (solitary or otherwise,) or to a corporal punishment, of (not exceeding) (60) 1000 lashes, on his bare back, in the usual manner, at such time and place as H. E. the commander-in-chief may be pleased to direct.

(Signed)——, D. J. A. G. (Signed) ——President, ——Regiment.
(Signed) ——, Interpreter, —— Regiment.

(51) J. A. G. Letter No. 256, 8th September, 1832, though they may vote less. So decided in several instances of reference.

(52) M. S. J. A. G. O. p. 411.

(53) G. O. C. C. 26th April, 1826.

(54) G. O. C. C. 22nd July, 1820.

(55) G. O. H. G. 25th January, 1826.

(56) *Simmons*, p. 203.

(57) G. O. C. C. 14th June, 1832. Has been ordered by the Commander-in-chief. (G. O. C. C. 22nd January, 1818; 17th April, 1828; 2nd November, 1829; 3rd November, 1830; 23rd February, 1832.)

(58) The sentence when confirmed, and prisoner sent to Calcutta, names of prisoners, their offences, sentences, place where, and date on which tried, (and confirmation.) The roll for the above purpose, to contain columns stating whether they can read and write; single, married, or widowed. Trade, or former occupation. Whether before convicted or transported, and how often. Report of character, and behaviour. Accurate description of his person, age, height, complexion, color of hair and eyes, and all particular marks by which he may be identified." (*Circular, A. G. O. No. 304, 28th February,* 1831.) *Not in Company's* army for Mutiny, only for *desertion*, (*military crime.*) Section 7, 4, Geo. iv. c. 81. May in King's.

(59) If in *murder*, &c. omit words in "*Italics.*"

(60) As much as 18 months have been awarded. G. O. C. C. 16th March, 1833. *If previous convictions*—" and having taken evidence of the prisoner's previous convictions," used after "finding guilty *of the crime*," cannot sentence soldier to be discharged. (Letter from Commander-in chief, 19*th August*, 1832,) and may recommend. (*G. O. C. C. 25th September*, 1832).

Recording sentence of death.

30.—*Recording sentence of death.* Allowed of by Section 27, 9, Geo. iv. c. 74, and sentence of transportation awarded in stead, (Section 29,) in all capital crimes, (*civil,*) except *murder.*

"The court, from the evidence before them, are of opinion, that the prisoner ——, —— regiment, is guilty of the crime exhibited against him, and "*do sentence him to be hanged by the neck till he be dead.*"

"But the court being of opinion, that the particular circumstances of the case do not require that judgment of death shall be executed on the prisoner, and having, as above, entered judgment of death on record against him, do order the prisoner ——, to be transported to N. S. W. (for life or term of years)." (61)

(61) Circular, J. A. G. O. No. 92, 6th May, 1833.

The Act, Section 27, requires the prisoner to be asked, if "he hath or knoweth anything to say, why judgment of death should not be recorded against any such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may, and is hereby authorized to abstain from *pronouncing* judgment of death upon such offender, and instead of pronouncing judgment, to order the same to be entered on record."

In criminal cases, the following is the course: *O. B. J. Stanley, 24th February,* 1822. The clerk of the arraigns asked him what he had to say why judgment should not be passed upon him, that he should die according to law, he pleaded his benefit of clergy on his knees at the bar. The recorder said, they have filed a counterplea against you, that you have already once had the benefit of your clergy, according to the statute. The clerk of the arraigns then read the plea (former convictions), the prisoner admitted his being the person. Sentence of death was then passed."

2. In the case of *Thurtell,* for the murder of Mr. *Weare,* (1824,) *Mr. Chitty* urged some legal points in arrest of judgment, which were over-ruled by Mr. J. Park, (as soon as the verdict of guilty was pronounced.) The clerk of the arraigns then asked if he had anything to urge, why sentence of death should not be pronounced. Thurtell asked time to arrange some affairs. Mr. J. Park having put on the black coif, passed sentence of death. (*Thurtell's Trial,* p. 104.)

In cases of *murder,* prisoners in the army have usually some time before execution. This is a point of extreme delicacy: either military courts should ask this question of the prisoner, or they should not. I have only known of one case in the Bengal army, since the Act (1829), still my reasons for thinking it should be asked are, 1st, that it is the safest course, and you are certain that the act bears you out.

2nd. Because though it has been said, why distress the prisoner's feelings? I reply, in a case of mutiny or desertion, which *may be death,* the prisoner is called in, but never till found guilty, to hear his former convictions read. Hence he knows he has been found guilty.

3rd. Because a man should know his fate as soon as possible, and not be told he is to be hanged in 48 hours. The expediency of the measure, recording sentences of death, I do not contend for, but it is said in Mr. *L. Clarke's* analysis of the 27th Section, Note 34, p. 78, " By Section 28, it (*record*) is to have the same

31.—*Proceedings.* Any letter sent by the Commander-in-chief to the president, to be recorded on proceedings. (62)

Letters of Commander-in-chief to be recorded.

Revision.

32.—*Revision.* No fresh evidence taken. (63) Exception, where the court have not exhausted all the charges. (64) On a revision, you read over the evidence, if necessary. The Commander-in-chief may point out that the acquittal was under misinformation as to a legal point. Thus where a general court-martial acquitted a prisoner of manslaughter, when the deceased received a blow (which caused his death) by the prisoner, it was pointed out (though no revision) that the prisoner was not tried for murder. It being clearly established in evidence that the prisoner did give the blow. (65)

The notion that, having taken an oath, and given an opinion of innocence under it, and not changing it when it is proved they were *legally* (or morally) mistaken, is erroneous. (66)

Commutation.

33.—*Commutation.* Clause 7, M. A. 32, and Section 8, 4, Geo. iv. c. 81, gives the Commander-in-chief the power to commute sentences of death to transportation in *military* cases. (67) But in cases of *mur-*

effect as judgment pronounced, and the offender subsequently reprieved. By adopting *this course*, the criminal is placed in a state of attainder. The (Supreme) Court has power, by the Charter of Justice, to *reprieve*, pending a reference to the King."

"The consequences of attainder are forfeiture of property to the King." *Blackstone*, iv. 380.

(62) G. O. C. C. 13th September, 1832.

(63) Clause 16, M. A. 1832, and G. O. C. C. 1st June, 1815.

(64) In Colonel Cawthorn's case, there were 13 charges; they passed an opinion on charges 1, 2, 3, 4, 8, and *cashiered* him, omitting any investigation of 5, 6, 7, 9, 10, 11, 12, and 13. They were ordered to proceed to investigate the rest. (*J. A. G. Letter, 21st January,* 1796. *James' Decisions, p.* 17. *See pp.* 1 *to* 21).

(65) The Commander-in-chief did not revise, as the prisoner had been long confined. (*G. O. C. C. 16th March,* 1833.) The court might have found the fact, and still have acquitted. But probably on a revision, would have found guilty, and sentenced to imprisonment.

(66) A court swears to do justice according to conscience, *best of their understanding, and the custom of war in the like cases*—i. e. if any doubt arises, for if the law prescribes a penalty, conscience, &c. as to the sentence is out of the question. Now, it is obvious, that if A points out to B that one evidence may convict of murder, and B not knowing this, acquits; where will be B's conscience if he, finding his error, refuses to make a change of opinion?

(67) The prisoner's consent need not be asked. J. A. G. (*Right Hon'ble R. Grant*) Letter, 15th June, 1832. But in cases of native soldiers, as commutation is not in the Native Articles of War, it has been done by the *consent* of the prisoner. (*G. O. C. C. 23rd June,* 1831.)

der, &c. the commutation by the Commander-in-chief, under Section 8, 4, Geo. iv. c. 81, afterwards concurred in by the G. G. in C. (68)

Duplicate copy of proceedings.

34.—Duplicate copy of the proceedings, in the case of a King's officer, or soldier, to be sent to H. E.'s Military Secretary, (69) and is made out by the D. J. A. G. (70)

Mutiny in the native army—distinction.

35.—*A native soldier* has been tried for mutiny, though he murdered two N. C. O. officers. (71)

Adjourn *sine die.*

36.—*Adjourn, sine die,* and the court cannot meet, without an order; where it did, it was declared illegal. (72)

Scale to find out guilt or innocence, &c.

37.—Scale to ascertain the guilt, or innocence of a prisoner.

Charges.	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	10th
Ensign ..15	N.G.	G.	N.G.	G.	N.G.	G.	G.	G.	N.G.	G.
,, ..14	G.	..	..	..	..	..	..	..	..	..
Lieut. ..13	G.	..	..	..	..	..	..	..	..	..
,, ...12	G.	..	..	..	..	..	..	..	..	..
,, ...11	N.G.	..	..	..	..	..	..	..	..	..
,, ...10	G.	..	..	..	..	..	..	..	..	..
Capt..... 9	G.	..	..	..	..	..	..	..	..	..
,, ... 8	N.G.	..	..	..	..	..	..	..	..	..
,, ... 7	G.	..	..	..	..	..	..	..	..	..
,, ... 6	G.	..	..	..	..	..	..	..	..	..
,, ... 5	N.G.	..	..	..	..	..	...	..	..	..
,, ... 4	G.	..	..	..	..	..	..	..	..	..
,, ... 3	G.	..	..	..	..	..	..	..	..	..
,, ... 2	G.	..	..	..	..	..	..	..	..	..
Major, (President,)1......	G.	..	..	..	..	..	..	..	..	..

(68) G. O. C. C. 16th July, 1833, under Section 4, 4, Geo. iv. c. 81.

(69) G. O. C. C. 10th June, 1833.

(70) J. A. G. Letter, 13th August, 1833.

(71) G. O. C. C. 14th June, 1832. The words in Article 5, Section 11, Native Articles of War, omitted in the translation the words "*being in the execution of his office.*" But, it is said, it is the intention to try all native soldiers by a native general court-martial, for murder &c., but not camp-followers. It is obvious, that if a D. J. A. G. can try *European*, he may native officers and soldiers. It is clear too, that many witnesses may be and have been kept away from their regiment to give evidence; whereas prompt trial is not only the best for the interests of justice, but it raises the character of the native officers, and the military profession generally. Camp-followers should, for the same reason, be also tried.

If it be argued, that a soldier may be on command 150 miles from his corps and station, I meet it by the answer, Let him be tried at the nearest military station, so as not to take away *civil* or any other witnesses. A regulation of Government G. O. (or alteration in the warrants to general officers) will effect it.

(72) G. O. C. C. 12th July, 1832.

The Clerk, with the Lord Chancellor, proceeded to cast up the numbers at the Woolpack, which they found to be as follow :

Charges.	1st.	2nd.	3rd.	4th	5th.	6th.	7th.	8th.	9th.	10th
Not Guilty,..............	120	81	83	135	131	88	85	121	121	124
Guilty,..	15	54	52	0	3	47	50	14	15	11
Majority, ...	105	27	31	135	128	41	35	107	107	113

(Lord Viscount Melville's trial. *State Trials*, vol. xxix. pp. 1477 to 1482, 29th April to 12th June, 1806.)

In the 1st supposed charge, 11 say guilty.
4 not guilty.

7 majority or guilty.

And the same as to punishment, only that *one* column for all the charges is enough. Except a *military* offence, and *murder*, &c. were charged; and then, 2.

38.—Remarks. The president has no casting vote. The Chief Justice of the Supreme Court has by Charter, when equally divided. (73) The Governor General and Governor in Council. (74) The chief Commissioner of the Court of Requests has. (75) President no casting vote.

"The President formerly had; it was expressed in the Articles of War." (76) The omission must be construed as a repeal.

With deference to the opinion of Lieutenant-Colonel Kennedy, p. 24, (1832.) The late Sir C. Morgan, J. A. G. Tytler, p. 311, Note, says, "*only a single vote.*"

The object in giving it to the Supreme Court, G. G. and G. in C. &c. has been with a view to *public expediency*, and in cases where the interests of Government are concerned.

I hope no general court-martial will ever allow the president to have a casting vote. No custom if illegal can prevail. The very withdrawing it, as mentioned by *Bruce*, proves that the intention was, that it should not be used.

39.—*Perjury.* Under clause 77, M. A. 1832, would be triable by a general court-martial, in such cases, as *murder* is tried, 120 miles distant. (*Sec.* 2, 4, *Geo.* iv. *c.* 81.) But in the *Company's* army, under Perjury.

(73) Charter of Justice, 26th March, 1774; Section 4, Rules and Orders of the Supreme Court, p. 138.

(74) 33, Geo. iii. (1793,) c. 52, Section 50; Auber, p. 338.

(75) Proclamation by G. G. in C. 24th October, 1829.

(76) Bruce's Inst. of Military Law, p. 208; M. S. J. A. G. O. p. 269.

Section 64, 4, Geo. iv. c. 81, may be tried in all cases, by a general court-martial; or a non-commissioned officer or soldier, by a general or regimental court-martial.

Prisoners. 40.—*Prisoners* are subsisted by the commissariat, in all cases except those confined under awards of the Courts of Requests, when plaintiff pays the subsistence money.

SECTION 13.—ARSON.

ARSON.—(1) At an European general court martial at Meerut, Monday, 20th August, 1827. *President*, Lieutenant Colonel James Cassidy, H. M.'s 31st Foot. (2) Captain A. Pope, 10th Cavalry, Officiating D. J. A. G., G. O. C. C. 8th October, 1827.

Charge. Against Francis Bayle, Gunner, 2nd T. 2nd B. H. A. placed in confinement.

"For having wilfully, maliciously, and feloniously set fire to and burnt part of the chuppur of one of the troop stables of the Horse Artillery at Meerut, on the night of the 31st July, 1827, or morning of the 1st August, 1827; with the intent to destroy the said stable, the property of the Honorable Company. The prisoner brought into court. No challenges. Court sworn. *Plea not guilty.* Address of J. A. that the trial was under Section 2, 4, Geo. iv. c. 81, &c.

Plea. Address. Prosecution.

1st witness. Prosecution. *1st Witness, Captain R. McMullen,* executive officer, 11th division of public works, sworn. Charge read. Examined by J. A. (*On receiving information, he went to the Barracks, about three weeks ago.*)

"I went there, and on examining the stables, I could not, at first, perceive any injury they had received, but" (*on the place being pointed out*) "I then perceived that three or four straws were singed or blackened by fire, without doing any injury whatever to the chuppur. This was on the 1st of August, as well as I can recollect."

Q. by J. A. "Did it appear to you to have been ignited so as in all probability would have kept burning till it had set the whole chuppur on fire?"

A. "I do not think it likely it would; as the top layer of grass was *moist* from rain and dew; (3) and I think a person ill-disposed,

(1) Tried under Section 2, 4, Geo. iv. c. 81, before the Act 9, Geo. iv. c. 74, came out. It is now triable under the 114th section, which makes it a *capital felony;* but, under Sections 27, 28, and 29, the court may abstain from passing a sentence of death, record such sentence, and transport the prisoner for life or term of years to N. S. W. See Practice of Courts-martial, p. 715.

(2) Two Majors, seven Captains, and five Lieutenants.

(3) Of course in the hot-wind season, when a strong wind prevails, the danger will be greater. Moreover, the position of the fire will show design, if the light be applied to that side from which the wind blows.

would have gone *inside* of the building, and set fire to the *dry* grass; particularly as both this stable and the one next to it were unoccupied. (4) It is the property of the Company. As the masonry is pukka, I should suppose the value to be about 2,500 rupees." (*Prisoner declines cross-examining.*) Prisoner declines cross-examining.

By Court. "The fire was in the three or four upper straws of the last or upper layers, and close to the eave. The appearance could not have been produced from any other cause than fire. I have seen so many burnt chuppers, &c. I could not have been deceived. (*Retires.*) By court. Retires.

Corporal W. Haverty, 3rd T. 3rd B. H. A. (*sworn*). Charge read. Examined by J. A. "I know the prisoner at the bar. I was lying on my cot between 12 o'clock at night, 31st July, or one o'clock in the morning of 1st August, 1827. The prisoner passed by me, went to the public lamp, (5) and took a light from it. Shortly after I heard some body call out, 'Bring back the jhamp-pole, Bayle. Bring back the jhamp-pole.' I rose and went into the verandah, and, seeing Serjeant Flinter there, I said, 'I suppose Mr. Bayle was up to some of his mad capers.' Serjeant F. replied, he was gone over through the stables with a light and a jhamp-pole, and said, 'Let us follow him, and see what he is up to.' I went along with F. and, after passing through the first range of stables, F. said, 'Be on your guard, he might be lurking somewhere about, and give one of us a thump.' We got through the other range, that is the E. range of stables, and immediately saw the thatch burning. Serjeant F. called out the barrack-guard. On the alarm being given, several men came, among whom was Bombardier Huggins, who went for Staff Serjeant Bulkley. During his absence, one of the men (Gunner O'Donnell, 3rd T. 3rd B.) took up part of a jhamp-pole which was lying close to the wall immediately under the place where the thatch was burning. I took it out of his hand, and held it until Bulkley came, who told me to put out the fire. I did so by beating the thatch with the pole. (6) A report was made to the officer on guard, *Lieutenant Hotham*, who ordered the prisoner to be confined when apprehended." 2nd witness. Prosecution. (E) (B)

By J. A. "The fire had destroyed very little of the chuppur. The horses and appointments of the rocket troop were not then in the sta-

(4) Certainly the dry grass would take fire soonest, but then the wind would not so easily get to it. The stable being unoccupied, there was less chance of detection, and if it had been burnt, would (I am told) have burnt down the whole range!

(5) Which is in the centre of each barrack.

(6) Why did he not do so before ordered? See his answer to court.

ble. When prisoner was proceeding to get the light, he passed me
(A) at his *usual pace*. He wore a round hat, a *shirt*, (7) and a pair of pae-
jamahs, or string-trowsers. After he took the light, I followed him
in three or four minutes."

(B) Q. "Did you see any candle or light sticking in the chuppur?"
A. "No, I did not see any candle. The light was applied to the
E. side of the chuppur. (8) The wind was E. The light was on the
outside, a very little above the eave. There were no jhamps or jhamp-
(I) poles at that stable, they had been taken away some time before." (*Pri-
soner declines examining.*)

By court. "The most E. stable of all was set fire to. When prison-
er took a light from the public lamp, he said nothing. Staff Serjeant B.
came to the spot in two minutes. I did not put out the fire, as I wished
(B) him to see it. I thought there was no danger; the chuppur being so
wet. I did not speak to the prisoner when he took the light. I don't
know what kind of light he took, whether a candle or a lamp wick.
(D) (9) The place where the fire was, was seven or eight feet from the
ground. Did not see the prisoner from the time he took the light,
till lodged in the guard." (*Retires.*)

3rd witness. Prosecution. *Serjeant Thomas Flinter*, 3rd T. 3rd B. H. A. *sworn.* Charge read.
Examined by J. A. "I know the prisoner. I was (at the time stated
in the charge) sitting outside the barracks, speaking with Serjeant Con-
(E) nor and Gunner Anderson. I saw the prisoner come out of the bar-
racks with a lighted candle in his hand, he then took a jhamp-pole
that was supporting a jhamp, and then went over towards the rocket
troop stables. I called to him repeatedly to bring back the pole; he
paid no attention, but went to the stable nearest the barracks. I went
with corporal H. *(2nd witness)* after the prisoner. We went across the
first stable, and from that to the next one: and on going to the oppo-
(B) site side of it, I saw a *lighted candle* sticking in the chuppur, the light-
ed part was turned out. I went and called the men out of their bar-
racks; and went with Anderson to the rocket troop, to confine the
prisoner." (*Witness identifies the pole.*)

(A) "The prisoner's dress—a pair of paejamahs, a round hat, *but no shirt.*
(H) When he took the light, he went off at about *quick march.* I followed
him immediately after. I walked quickly till I reached the stable, and

(7) Third witness says no shirt. See B.

(8) The *East* and S. E. winds prevail during the rains at Meerut.

(9) Was any candle, &c. found in the chuppur; 3rd witness says there was, B. The third witness is more full.

then, as it was dark, and there were pillars in the stable, I walked cautiously and slowly. I examined the chuppur, and found about the breadth of my hand burning; as the straws became dried by the light of the candle, they burnt and fell off. When he left the barracks, there was sufficient light to enable me to see, and from the way he held the candle, I saw his face distinctly. When I reached the stable, I did not see the prisoner, nor again that night. I do'nt know what became of the candle sticking in the chuppur. It was set on fire on the E. side. (C)
There was a very little wind blowing from the tank; but not sufficient to put the candle out. The fire was not put out in my presence. (10) I had nothing to put it out with. (11) I do not know where the jhamp-pole was found. The prisoner said nothing when he left the barracks. (*Prisoner and court decline examining.*) Adjourn at 3 o'clock, till 11 o'clock to-morrow forenoon. Adjourn.

Second day's proceedings. 2nd day's proceedings. 4th witness. Prosecution.

The court, pursuant to adjournment, re-assembled on Tuesday, the 21st August, 1827, at 11 A. M. President and Members all present. Prisoner brought into court.

Serjeant Thomas Connor, 3rd T. 3rd B. H. A. *sworn*. Charge read. Examined by J. A. "I know the prisoner. I was (at the time stated) (E) sitting outside of the barrack of my troop. I saw a man come out of the barracks with a light in his hand, and go towards Gunner Anderson's room (of the same troop as myself), and take a jhamp-pole which upheld the jhamp. The man then went towards the stables of the rocket troop, when Serjeant F. *(3rd witness)* twice called to him to leave the jhamp-pole: he made no answer. Serjeant F. went away, and I remained sitting at the table. A short time after, I heard Serjeant F. call out for the guard and troop to be turned out. I immediately ran off to the place where I heard Serjeant F. calling out; and on my arrival at the E. side of the rocket troop stable, which fronts the *tank*, (C) I observed a *candle* stuck in the *thatch*. On the arrival of Corporal H. (B) and several men, some one (12) struck out the light that was in the thatch, with a small jhamp-pole. *(I went away with Serjeant B. who reported to the Serjeant-Major.")*

J. A. "I did not see the face of the man, distinctly, who took the light from the barracks. I did not see the prisoner when I arrived at the stable." *(Prisoner declines examining.)*

(10) He went to call out the guard. See second witness's evidence.
(11) See Note 6.
(12) Corporal H. himself. *(2nd witness.)*

(E) *By court.* "I was between 25 and 30 yards from the prisoner, when
(A) he came out of the barracks. I do not know how he was dressed. I
(B) can't say whether he had a candle or oil-light in his hand. I think
(D) the distance from the ground to where the *candle* was sticking in the chuppur, was eight or nine feet. I can't say exactly. The *end* was in the thatch, and wick out. I was sitting close to Serjeant F.'s right, at the same table, when the man came out." (*Retires.*)

5th witness. Prosecution. *Gunner Henry Anderson*, 3rd T. 3rd B. H. A. *sworn.* Charge read. Examined by J. A. "I know the prisoner. I was (at the time stated) in conversation with Serjeants F. and Connor, at the troop mess table. My attention was attracted by the fall of a jhamp, when I saw a man *with-*
(A) *out a shirt*, with a pair of loose trowsers, with a dark hat, holding a light between his hands nearly folded together (it then appeared to be part of a candle); he was proceeding at a *smart pace* towards the thatched stable of the rocket troop. Serjeant F. called to him three or four times, 'Bring back that jhamp-pole, Bayle.' The man still proceeded towards the stables; on his entering which, Serjeant F. and Corporal H. followed him. I was next alarmed with the cry of 'Turn out the barrack-guard,' (I think it was F.'s voice.) I gave the alarm, and went over myself. On coming to the further side of the off (E.) stable, I saw a light *reflected on the ground*, and, on looking up, I saw
(B) part of the thatch on fire, directly under which, leaning against the wall, was the jhamp-pole that had supported the jhamp of my room. (*Reported.*)

J. A. "I know the jhamp-pole by no particular marks, except by its being broken; and there being no other like it in the barracks. (*Swears to the jhamp-pole found being the same that supported his jhamp.*)
(I) I did not see the man at, or near, the stable, the thatch of which was set on fire." (*Prisoner declines cross-examining.*)

By court. "I might have been 20 paces from the room where the jhamp was, on coming out of which, some few minutes before, I had left the jhamp supported by the pole, which I had been in the habit of handling daily; and on proceeding to alarm the guard, which was at the very next ward, I found the jhamp down and the pole missing. I can't positively say who the man was, who took away the light and jhamp-pole. He might have been 16 or 17 paces from me." (*Retires.*) Adjourn at 3 P. M. till 11 A. M. to-morrow forenoon.

Third day's proceedings.

3rd day's Proceedings. Wednesday, 22nd day of August, 1827, re-assembled at 11 A. M. pursuant to adjournment. President and members all present. Prisoner brought into court.

Staff Serjeant W. Bulkley, 3rd T. 3rd B. H. A. *sworn.* Charge read. Examined by J. A. "I know the prisoner, I was (*at the time stated*) awoke by Bombardier Huggins, of the same troop with myself, who told me the rocket troop stable was on fire. I went over and saw it on fire, and ordered it to be put out." 6th witness. Prosecution. (F)

J. A. "I examined the chuppur two or three days afterwards. The part burnt was the size of a leather glove. The chuppur was so wet, that it could not have burnt at the time. (*Prisoner declines cross-examining.*)

By Court. "Corporal H., Gunner A., and Serjeant F. were the men I observed present, when I saw the fire. Corporal H. had part of a jhamp-pole in his hand, and he put the fire out with it, by my order. The best part of the troop was there. I don't know their names. I did not take notice of any *candle* being in the chuppur." (*Retires.*) (B)

Bombardier John Stagg, 3rd T. 3rd B. H. A. *sworn.* Charge read. Examined by J. A. "I know the prisoner. I released the prisoner from the Conjee-house on the 31st July, at three o'clock in the afternoon." (*Prisoner declines cross-examining.*) Retires. 7th witness. Prosecution.

Staff Serjeant Mat. Morris, 2nd T. 2nd B. H. A. *sworn.* Charge read. Examined by J. A. "I know the prisoner. I did order the orderly, Serjeant Browne, of my troop, to go to the prisoner's cot, and see if he was in it; this was between the hours of 12 and 1 o'clock. (*Charge.*) He returned immediately, and reported the prisoner absent from his cot. I went myself, five minutes afterwards, he was in his cot. He was *without a shirt*, with a pair of paejamahs, or overalls, on. I had nearly the length of the barracks to go to the prisoner's cot. I stop at one end of the barrack, and he stops at the other, amongst the men." (*Prisoner declines cross-examining.*) 8th witness. Prosecution. (A)

By court. "Serjeant Browne did not report any other man absent, nor do I know if any other man was absent. I can't say, whether he was awake when I went to his cot, or asleep; his eyes were closed. I spoke to him, and he gave no answer. I did not wake him." (*Retires.*) (F)

Arch. Brown, late Serjeant, 2nd T. 2nd B. H. A. *sworn.* Charge read. Examined by J. A. "I know the prisoner. I was Serjeant on the 31st July last. I went between the hours of 12 and 1 (*charge*) by order of Staff Serjeant M. to the prisoner's cot; he was not in it." (*Prisoner declines cross-examining.*) 9th witness. Prosecution.

By court. "When I went to the prisoner's cot, I was told that the alarm was given that he *intended* to set the stables on fire. (*Court cleared. Court opened.*) I called the roll on coming back from his cot, and none were absent besides him." (*Retires.*) Court cleared.

Close of prosecution. *J. A.* "I close the prosecution for the Crown."

Defence. The prisoner is called upon for his defence. States that he is not guilty, but does not wish to enter into any further defence, and does not know what he can say. Adjourn. The court adjourn at 3 P. M. till one o'clock to-morrow forenoon.

4th day's proceedings. *Fourth day's proceedings.*

The court re-assembled at 12 o'clock on Monday, 27th August, 1827. *Read* division orders of 23rd instant, postponing re-assembly, [illegible] until further orders, owing to the illness of the president, (13) and division orders, 26th instant, directing its re-assembly, at the hour and date above-mentioned.

The court is closed. J. A. informs the court that the prisoner has reconsidered his reply, and wishes to be allowed to submit a written defence to the court. The court agree to his petition. (*The court is opened.*) The prisoner acquainted with the decision of the court. Prisoner produces a written defence, and requests permission of court for some one to read it for him; which is acceded to. (14)

Defence. *Defence.* Mr. President and Gentlemen of this honorable court. (15)

"When the evidence is purely presumptive, as in the present case, the defence must mainly rest upon the inconsistencies and contradictions of the several witnesses. Circumstantial evidence, to be conclusive, should be without a flaw!!! Which is not here the case. The court must have remarked the evidence of Serjeant F. and Connor; (16) also how impossible it is that *the same man* could have taken a light from the barrack *with a shirt on,* as described by Corporal H. (17) and *instantly* after appear outside *without* a shirt, as related by Serjeant F. and Gunner A. (18) I beg particularly to call attention to the extraordinary circumstance of Serjeant F.'s recognizing me, when Serjeant C. and Gunner A. both, close to him, were unable to do so, though equally well acquainted with my person; (19) others will, doubtless, present themselves to the court.

(13) As the court did not meet pursuant to adjournment, (the president being absent,) there could be no further adjournment by the *court.* Hence the application, and order. Had the president not again attended, the trial must have been *de novo.*

(14) Not stated who did read it.

(15) Stating that he was not before aware of his danger, to a full sense of which he had been called.

(16) Third and fourth witnesses.

(17) Second witness, and see A. A. A.

(18) Third and 5th witness. Nothing more easily done. The men frequently sleep out, in the warm weather, without their shirts.

"On the night in question, a man was seen coming out of the barrack-room, and was called to thus: 'Bayle, bring back that jhamp-pole,' when he was not above 25 yards from the person who called; it is therefore highly improbable that any person after being thus called by name, *if it really had been that person*, should instantly go and commit the act; for discovery was almost certain. (F)

"A lighted candle was found placed outside, and stuck in the chuppur of the E. stable, nine feet four inches from the ground, and that the eaves of this chuppur are two feet three inches in projection, and that the chuppur was *wet*. (20) It is scarcely possible any single person, without a ladder, or other means than a pole, could place a lighted candle in such a situation; and no person would have put the light into *wet* straw (21) that would scarcely take fire, with the intention of burning down the stables, when the straw underneath must have been perfectly *dry*; the chupper much lower and easier of access; and the act more quickly effected, and with less chance of detection. (22) So little fear did one of the witnesses express, that he did not even attempt to put it out until he had sent to the troop barrack, 130 yards off, for the Staff Serjeant to witness the fire, and then it was instantly and easily put out. (23) (D)

"In the absence of direct proof, very much will depend on the weight due to Serjeant Browne's evidence. (24) He was suddenly awoke out of a sound sleep, and ordered to go to my cot *immediately*. (25) I submit whether, in his drowsiness, he might not have mistaken some other cot for mine, however familiar with it under other circumstances.

"I have considered *Serjeant Brown* inimical to me ever since I reported him to the Captain on duty as drunk on the regimental quarter (G)

(19) People do not always observe all the same points, the fact of identity is not so much to be relied on from dress where the party's person is known. If unknown, *strangers* naturally prove identity from describing the dress, and no other person so dressed. If I know A.'s features, where is the use to ask me as to the *inferior fact*, dress, which A. may change a dozen times, while his countenance remains the same, unless *disguised;* in which case, the dress of the disguised person then becomes a necessary proof.

(20) See D. D.

(21) This arose perhaps from the evidence of first witness, the improbability, being wet, of burning down.

(22) Wished some member of the court to be deputed to view the spot. The whole court should, as evidence must be before *all*. This should be done.

(23) See B, 2nd witness's answer to court.

(24) Ninth witness.

(25) See F. it was the 6th witness, and not Browne awoke out of his sleep!

guard. If these two circumstances be coupled with Staff Serjeant *Morris'* evidence, (26) which fixes me *asleep* on my cot within five minutes after I was reported absent by Serjeant B. be considered, I hope the court will give me the benefit of any doubt that may exist from their combination. (27)

"I beg to impress on the court the awful situation in which I stand, as, if convicted, my life is the forfeit.

"Conscious of my innocence, I hope what I have said will have due weight with this honorable court; which are here my judges; and upon whose wisdom and justice I confidently trust my fate."

(Signed) Francis Bayle,
2nd T. 2nd B.

27th August, 1827.

J. A. here requested leave of the court to make a *reply*, to which the court accede, and to enable him to do so, and copy out the fair proceedings, adjourn till 11 o'clock on Thursday morning next, the 30th instant.

5th days' proceedings. *Fifth day's proceedings.*

The court, pursuant to adjourment, re-assembled on Thursday, 30th August, 1827, at 11 A. M. President and members all present. The prisoner brought into court.

Reply by J. A. REPLY by J. A. Mr. President and members of the court-martial. (After stating the painful task and duty of endeavouring to deprive a prisoner of the benefit of his defence, &c.)

"Having had to perform the duties both of J. A. and of prosecutor, it appeared to me incompatible with my duty to assist the prisoner in setting up any defence, which immediately thereafter it would have been incumbent on me to answer. I still endeavoured so to manage that his cause might not, at any rate, be rendered worse by any plea

(26) Eighth witness does not know. See (F.)

(27) "No motive or cause of complaint against the Hon'ble Company; the act, therefore, improbable, or setting fire to a building more than 130 yards from that in which any of the men slept, and more than 200 yards from my own troop barrack. The building nearest to that in which the light was found is 64 yards distant; and is an empty stable: the chance, therefore, of the fire reaching a barrack room was not to be calculated on, more especially as there was very little wind (see. C, *3rd witness,*) and the chuppurs were, of course, equally wet."

"I have played many tricks in my day, but all of a harmless kind. This propensity has got me the name of "*Mad Bayle;*" and if any wild prank is committed, it is assigned to me. Thus the present incredible story has obtained a ready belief in the H. A.; whereas, had any other person been accused, it would not have been believed."

which might be not merely unavailing, but possibly prove extremely prejudicial to him.

"The case before you rests, almost entirely, upon circumstantial and constructive evidence, *i. e.* evidence in no part of which there is any *positive, direct* proof of the crime having been committed by the prisoner. This, however, often has been, and very frequently will be, the case in crimes such as *that* of which the prisoner is accused. Were positive testimony always essential to the bringing of offenders to trial with effect; it would be but seldom, that any trial could be held for crimes of a heinous and *secret* nature. No man would invite spectators of his guilt. Very few persons do things of a premeditated nature without adopting every precaution they can think of to prevent the prosecutor having any direct evidence to produce against them; either by the selection of an hour when people are supposed to sleep, or of a place where they imagine no eye can witness their crime. (28)

"In some instances, indeed, strong *circumstantial* evidence has been considered even *more* conclusive and satisfactory than *positive* testimony. (29) I beg to mention the trial of *Richard Patch* for the wilful murder of Mr. Blight, now on the table. (30) Circumstantial evidence.

"In the present case, the hand which placed the light in the chuppur hasnot, by positive evidence, been proved to have been *that* of the prisoner. But, as far as concurring testimony of *time, place,* and *circumstances* can establish the case, there appears abundance of such coincidences, as to justify the belief that the prisoner was the perpetrator of the deed."

"When almost every other person is asleep, the prisoner is seen to go to the public lamp in the barrack room (not of his *own,* but) of (F)

(28) Moreover, a dark night as this was, is usually selected by thieves and others to commit acts, as they can, if pursued, more easily escape. Again, we must not presume on the ignorance of a prisoner. Many soldiers enlisted have been *old offenders* at home; besides, if the prisoner has not ingenuity to contrive, there are others who have.

(29) *Facts* cannot change, but *evidence* depends on credit, and *it* wears out of the memory.

(30) In 1806, there was a pecuniary advantage coming to the prisoner, on Mr. B.'s death, hence the act. He fires several times at the windows at night, and writes Mr. B. who is in the country, that there are thieves constantly coming to the house. When he does fire, the *fatal* time, he calculates on the belief that the story of thieves may take away suspicion from himself. He does fire when Mr. B. is sitting in a room, as he knew, by himself. He goes up to near the window without shoes, and in his dirty clothes bag are found his dirty, soiled stockings, which, not being an usual thing, was suspicious. See at the end of case 3, *murder,* Section 15.

another troop; to take thence a light, and with a light is almost immediately after seen, by another person, to come out of that barrack, to
(H) take a jhamp-pole and to go over at '*quick march* pace,' towards the rocket troop stables; the thatch of one of which is shortly afterwards found to be on fire. The prisoner's face was distinctly seen, and on his going off with the light and pole, he was called out to by the witness who had seen his face. On his not attending to this, Corporal H. (who saw him take the light) and Serjeant F. (who saw him take the pole, and go off with the light) follow in the direction the latter had seen the prisoner go towards; and on their reaching the E. or furthest side of the stables furthest off, part of its chuppur is seen to be on fire, and a jhamp-pole found immediately under the place. The man whom they had pursued was not there.

"It has been shewn, that this stable was unoccupied, and all the
(I) jhamps and jhamp-poles belonging to it had been taken away sometime before. With respect to the pole in question, it has, I think, been satisfactorily shewn to have been the identical pole which Serjeant C. saw the man take away from underneath the jhamp of *Gunner A.'s* room, immediately after he had seen him come out with a light from the barracks, and which *Gunner A.* had recognized immediately on seeing it at the troop stable placed directly under the burnt part of the chuppur."

"The identity of this pole has been sworn to, by a man (See I,) 5*th wit.*) who knows it well, from its being broken, and none like it in the barrack.

" Two non-commissioned officers suspecting him, pursue him. They find a light burning in the chuppur.

"Serjeant F. (3*rd witness*) had at the time recognized, as the prisoner, Bayle. A search was immediately made. Serjeant Brown, on going to his cot, found him not there. The roll is called, and the prisoner found to be the *only* man absent. A short interval ensues, and the prisoner is discovered lying, *apparently* asleep, on his cot."

"The chuppur was burnt to a small extent, (31) (though providentially saved from entire destruction from its wetness, and by timely assistance in putting it out,) and the prisoner who had been absent from his cot is, shortly afterwards, found on his cot.

"Here, then, is the interval of the prisoner's absence; i. e. from the time he was lost sight of by Serjeant F. and Corporal H. until discovered by Morris on his cot.

(31) See (B) 5th witness, "light *reflected on the ground.*"

" Should the court consider, that previously to his having been lost sight of, the prisoner's previous conduct furnished just grounds for *suspicion* as to his *intentions,* (32) they no doubt expected of the prisoner that he should fully and satisfactorily account for himself during the interval above-mentioned. He has not done so, and his failure in this respect may tend to confirm the view of the evidence here submitted.

" The prisoner, in his defence, has endeavoured to invalidate the evidence for the prosecution, by pointing out a discrepancy between the testimony of the witnesses with regard to the *shirt.* This is in- (A)
consequential. (33) Corporal H. is the only witness who has expressly deposed to the prisoner's having a shirt on when he saw him go to the public lamp. Whether the prisoner had actually divested himself of the shirt in the interval, between bringing the light to the outside of the barrack, and taking up the jhamp-pole, when he was recognized by Serjeant F. without a shirt, or whether the witness H. might have been deceived, must rest with the court to judge of. They had no motive to mistake the fact, and had more important objects to attract their attention.

" The fact of Serjeant F. having recognized the prisoner, when Serjeant C. and Gunner A. did not, may easily be accounted for, as Serjeant F. had been in the same troop with the prisoner, and must have known his person well; the others had not!

" With regard to the prisoner's argument, as to the improbability of committing the act after his name had been called out, it may be observed, that the result has shewn, if the charge is proved, that he actually did commit the crime which it was suspected at the time he was about to perpetrate, and that the deed was accomplished without his being detected or discovered, while in the act of applying the light to the chuppur.

" As to the improbability of the prisoner's setting fire to a chuppur
from its *height* and *wetness,* the strongest answer that can be given to (D)
this argument is, the fact of the light having been actually affixed, and communicated fire to the chuppur, and *there* by some human hand that

(32) See 8th witness. Court cleared.

(33) The 2nd witness says, he had a *shirt* on.

The 3rd, 5th, and 8th, no shirt. The others could not say. Men frequently sleep in the warm weather without shirts; but how easy to throw it off, if he had it on. See (A) 2nd witness. Why was not his cot searched?

light must have been placed; (34) therefore, what was practicable to one man in such a case, was equally so to another.

(B)
5th witness.

"The jhamp-pole having been found on the spot, and the light actually burning in the chuppur; the court in this case can be at no loss to discover the means whereby it was effected. (35)

"As to the improbability of placing fire in a *wet* chuppur, the prisoner was well aware that he was pursued, and therefore, that he had no time to deliberate or to select the spot most favorable for his diabolical purpose; fortunately the designs of the wicked are often detected by some act or other of unaccountable oversight, or folly.

"As to the prisoner's attack on the credibility of Serjeant Browne, the credit and respectability of a witness are not to be sacrificed to mere surmises or assertions, unsupported by evidence. It was open to the prisoner to cross-examine Browne, to adduce evidence in disproof of that given by him, or to establish the inimical feeling of which he accuses him. (36)

"As to the prisoner's *motive,* it is impossible to enter into the mind of a man, or to comprehend his *motives*, but by his *actions*; his motives are only known to himself, but, to the laws of the country, it is sufficient to prove the act, which alone implies the evil intent *and malice* necessary to constitute the crime.

"With regard to the ignition of the chuppur, the extent destroyed, and the application of the light to that side of the chuppur from which the wind was slightly blowing at the time, the evidence seems so full and clear, that I have no particular remarks to offer.

"If the court shall be satisfied that the prisoner did actually set the chuppur on fire; (37) then, there is but one solemn, awful duty for them to perform.

(34) I have heard of a rat taking up a light *(oil-wick)* into a chuppur, but never a piece of a candle; besides, only a human being would turn the lighted part *outside*.

(35) A jhamp-pole is made of bamboo, and by splitting it, so as not to squeeze the candle, (previously making a hole, with it, in the chuppur), it would easily place the candle in the chuppur; by seizing the candle near the wick, side-ways, and having fixed the candle to draw back, and take away the bamboo. These poles being six feet high, and a man, with his arms uplifted, equal to seven feet, we have 13 feet, certainly 12 feet of length to reach less than 10 feet of height. The pole should have been examined, to see if there was any marks of tallow-grease about it. No doubt, in the hurry, he left the bamboo on the spot.

(36) "Justice requires, I should state the fact (which can be proved by evidence if the court deem it necessary), that the report, which he states he made of Serjeant B. being drunk on guard, having been declared to be false and malicious; he the prisoner was confined for two days in the guard, and for seven days in the conjee-house, for making such report."

"But if, on the contrary, the evidence produced has not fully established an *actual, wilful,* and *malicious* burning of a part of the said chuppur; and has not brought conviction to your minds, he will benefit by your opinion, and be acquitted.

"I now leave the case in the hands of the court; convinced that justice will be done alike to the crown and to the prisoner."

Rejoinder. "The prisoner having requested permission to remark on the *reply*, and the J. A. objecting, the court cleared. The court are of opinion that, as no new matter has been inserted in the J. A.'s reply, the prisoner cannot, with propriety, be permitted to make any remarks, or rejoinder, whatever." Rejoinder. Court cleared.

"The court is opened. The prisoner is called into court, and the above decision read to him." Court opened.

"The court is closed for deliberation." Closed to deliberate.

"The whole of the proceedings are read over, and the fair copy compared with the original." Proceedings read over.

"Finding. The court having maturely considered the evidence for the prosecution, as well what the prisoner, Gunner Francis Bayle, 2nd T. 2nd B. H. A. has urged in his defence, are of opinion that he is not guilty; and they do therefore, acquit him thereof." Finding.

(Signed) James Cassidy,
Lieutenant-Colonel, 31st Foot, President.
(Signed) Alexander Pope,
Captain, 10th Cavalry, officiating D. J. Advocate.
Approved and confirmed,
(Signed) Combermere,
General Commander-in-chief.

The prisoner to be immediately released, and directed to return to his duty.

By order of H. E. The Commander-in-chief,
(Signed) W. L. Watson, A. G. of the army.

N. B. The letters below, and referred to the margin, are intended to guide the reader in tracing the evidence, upon the principle of the *analysis and dissection* laid down in chapter 2, (*Court of Inquiry.*)

(A) Shirt.
(B) Candle.
(C) Stable and tank.
(D) Height of chuppur from the ground.

It is not necessary, as usual, to support the credit of a witness, unless the prisoner's witnesses by evidence have discredited such testimony; it is, then, evidence to rebut evidence.

(37) The quantity burnt is immaterial. 4, Blackstone, 222.

(E.) Distance of prisoner from the witnesses.
(F.) Awoke out of sleep.
(G.) Enmity of Brown.
(H.) Prisoner's rate of moving.
(I.) Jhamp-pole.

Prosecution.

1.—Witness, Captain McMullin, p.
2.—Do. Corporal W. Haverty, p.
3.—Do. Serjeant T. Flinter, p.
4.—Do. Do. T. Connor, p.
5.—Do. Gunner Anderson, p.
6.—Do. Staff Serjeant Bulkley, p.
7.—Do. Bombardier Stagg, p.
8.—Do. Staff Serjeant Morris, p.
9.—Do. Gunner Brown, p.

SECTION 14.—LARCENY.

(1) At an European general court-martial, held at Agra, on Saturday, 28th May, 1825. (G. O. C. C. 4th August, 1825.)

President.

Lieutenant Colonel J. Delamain, 58th Regiment, N. I. (2)

D. J. Advocate General—Captain W. P. Cooke.

Interpreter—Captain Simmonds, 21st Regiment, N. I. (3)

Gunner Phillip Dogherty, laboratory man, attached to the Agra Magazine, was arraigned on the following charges:

1st. "For clandestinely concealing himself within the magazine yard in the fort of Agra, on or about the evening of the 23rd February, 1825, until after the gates of the yard were shut for the night; with the felonious intention of stealing property therefrom during the night."

2nd. "For feloniously and forcibly breaking open the lock of the treasure chest lodged in the office or store-room, in the said magazine yard, and for feloniously and forcibly breaking open the lock of a box contained in the said treasure chest; and for feloniously stealing, taking, and carrying away therefrom a bag containing the sum of sonat ru-

(1) Tried under Section 2, 4, Geo. iv. c. 81. Would be now under Section 87, 9, Geo. iv. c. 74, *transported* for life or term of years, to N. S. W., or imprisonment not exceeding four years. The distinction between grand and petit larceny abolished. Section 77.

(2) Members, seven Captains, six Lieutenants, one Ensign—total 15.

(3) Read an attested copy of Commander-in-chief's warrant to Major-General T. Reynell, C. B. commanding Meerut division. The forms at this trial as usual.

pees six hundred and fifty, (650,) the property of Government, and arrears of pay belonging to men then on command, with which said bag of 650 rupees, he, the said Gunner P. D. effected his escape from the said magazine yard, by lowering himself from the window of one of the store-rooms, a height of about 22 feet from the ground."

3rd. "For absenting himself without leave from duty on the morning of the 24th February, 1825, and not returning till brought back from the bazar on the forenoon of the 26th, in a state of drunkenness; when his box was examined, and in it was found the bag, in which had been placed the said sum of Sicca Rupees 650; but which said bag, on its discovery in the said prisoner's box, contained only the sum of sicca rupees 111."

J. A. "Prisoner, do you acknowledge yourself to be properly described by name and designation in the crime just read?" *A.* "I do." Correctly described.

J. A. Informs the court, Captain Chadwick, commissary of ordnance, had originally investigated the matter, and framed charges; but that the above had been substituted in their room, his attendance as prosecutor may be useful. Prosecutor.

"The court accede to J. A.'s suggestion, and desire Captain C.'s attendance as prosecutor, who accordingly assumes that office."

J. A. "Gunner P. D. are you guilty or not guilty of the charge?" *A.* "Not guilty." Plea.

J. A. "Captain C. do you wish to submit any observations or address to the court, in opening the case for the prosecution?"

Prosecutor. "I have nothing to offer in observation to the court, the information I possess I am ready to give in evidence."

Captain Thomas Chadwick, commissary of ordnance, Agra, is sworn. Charge read. Examined by J. A. 1st witness. Prosecutor.

Q. "Be pleased to state all that you know of the prisoner's conduct, as alleged in the charges."

A. "On the 24th February last, *Paunch Cowrie*, head sirdar of the magazine, reported to me, between 2 and 3 P. M. that the box in which the public money had been kept had been broken open, as also the lock of the small inner box, and that the bag containing 650 rupees (A) was taken away. I made inquiry, but could not discover how the theft had been committed. On the 26th, about 10 A. M. on my going to the office, the sirdar reported that he had found a stick and a rope (B) fastened to a window in the upper room of one of the godowns. I went immediately to the place, and, on examining the outer wall, I saw the *marks of shoes* against it; (4) I immediately said, an *European* had (C)

(4) Shoes often tell tales. See at the end of case 3, *murder*, Section 15.

committed the theft, as a *native* would have descended without shoes. The prisoner's quarters are immediately under, and there is no communication with the wall, but through his compound. I went into the house in which he lived, and asked Serjeant Hussey, who lives in the same quarters, where the prisoner was, and if he knew any thing of the theft. He said he had not seen the prisoner since the 24th. I sent all over the fort to look for him, he was found in one of the bazars, and brought to me in such a drunken state, that he could give no account of himself; and the man who assisted in bringing him reported to me that he attempted to kill himself with a penknife, and that
(D) he had taken it out of his hand. I sent for a conductor on duty, and
(E) several other persons; had his box opened in my presence, in which we found a bag containing a very few rupees, and many more scattered about his box, and some in a small till in his box, amounting in all, I think, to 111 rupees. On reporting the case, the commanding officer of the garrison ordered the man to be sent to the artillery quarter-guard, and told me to inquire about it, when the man was sober. I went to the guard on the morning of the 28th. I asked the prisoner, in presence
(F) of the serjeant major, how he came to commit such a crime. He ansered, "*it is no use denying it*," that he had done so, and had concealed himself in the yard the evening before for that purpose. I asked him what he did with the remainder of the money, he said, he did not know, that he was drunk; but, that he recollected giving a gold-mohur to a tailor in the bazar, and a few rupees to some other person. I don't recollect the name, but they both gave the rupees on being called upon."

J. A. "Was the prisoner on duty on the 23rd February?"

A. "A laboratory man is always considered to be on duty at the magazine. The conductor on duty has charge of the magazine, and the durwan sees the gates shut for the night; and when the gates are locked, the keys are given to the havildar of the guard. The gates are usually shut at sun-set; sometimes later, according to the work."

(F) Q. "Was ths prisoner's *confession* perfectly *voluntary*?"

A. "Yes it was; no inducement to make it was held out to him, that I know of. I did not tell him it was no use to deny it. He was not warned against committing himself. No money in addition to, nor the 111 rupees has been returned into the treasure chest, but are in possession of the man who received them back: I don't know the exact sum."

(B) *Cross-examined by prisoner.* "The stick or spar was placed across the chokut of the window, and the rope was lying on the ground, and

underneath, apparently as if the knot had slipped and broken; it appeared as if the rope had been fixed to the spar by a running loop, that it might be drawn down, and the knot untied, and the rope thus loosened from the spar. Conductor *Kilgour* did not report the prisoner absent without leave."

By court. "I believe there was no door to the store-room, but there was a havildar's guard at the outer gate. The head native writer and his assistant were always present in the office, in the day-time, taking their accounts, and every man passing out of the yard was examined by the sentry and durwan. There is no specific guard allowed over the treasure chest: nor do I think it necessary in such an enclosed situation. There is no possibility of getting into the yard, after the gates are shut, without ladders; the walls are very high. I measured the height, and it was 22 feet from the window to where I saw the spar and rope. There is always treasure lodged in the chest, the pay of the men on command, and other public money. I don't know exactly the size of the window, but it was quite large enough for any man to go through it. The prisoner did not say that he had gone through the window, but that he had got out through the means of a stick and a rope. He did not say what sum he had taken out, he merely said he had taken the rupees. *Munsah,* magazine man, and several others, who are in attendance as witnesses, brought the prisoner to me from the bazar." (B)

Re-examined by J. A. "Q. Was the money entered in the magazine books as Government money?" Re-Examined by J. A.

A. "The whole of it was money issued as pay for absentees, and for the purpose of paying daily workmen. I can't say what part belonged to absentees, without examining the books. The whole of the money was to be afterwards accounted for to Government." *(Witness having his evidence read over, confirms it, and resumes his character as prosecutor.)* Prosecutor remains in court.

Conductor of ordinance, Peter *Kilgour,* Agra Magazine, called, sworn. Charges read. Examined by *prosecutor.* "On the 26th February last, the prisoner was brought into the fort, to the guard-room of the magazine, from the bazar, in a state of intoxication; I accompanied Captain C. to the prisoner's house, and saw the prisoner's chest or box broken open by the blacksmith, in the presence of Captain C. and Serjeant *Paton;* and also of *Paunch Courie,* head magazine sirdar. When I saw the bag, now produced in court, taken out of his box, containing about 70 rupees, and 40 rupees strewed about the inside of the box, amounting altogether to about 110 or 111 rupees. I marked the bag with the figures "26," as denoting the day of the month." 2nd witness. Prosecution. Examined by prosecutor. (E)

Examined by J. A. *Examined by J. A.* "I had not seen the prisoner for at least two or three days (before 26th February). I was there on duty, and had he been at the magazine, I should have seen him. I did not see him at the magazine on the 23rd February. I was then on that day. He might have been there without my seeing him. On that day (23rd February) I was in the magazine office, which is outside the magazine yard. My principal duty was writing in the European office. The room in which the treasure chest is kept is called the office for the native writers of the establishment; I am not sure that I was in the magazine yard that day. The European office is close to the gate of the magazine. It was my duty to shut the gates that night, and I saw them shut. I did not examine the interior. A person might have been shut in without my knowing it. I was present when Captain C. (B) examined the wall of the magazine yard. I did not see the height of the window measured, but I should suppose the height to be 20 to 25 feet from the ground. I saw a rope, in two pieces, tied together, lying on the ground, and a part of a chokut lying inside the window. It appeared to me that they had been used by the thief in carrying off the stolen bag of rupees from the treasure chest. I saw it the day before Captain C. did; it had been reported to me, and I reported it to Captain C. and that was the cause of the suspicion attached to the (C) prisoner. I saw the *marks* of the *footsteps* down the wall, they were those of a shoe. The prisoner had not, to my knowledge, obtained leave to be absent from duty between 23rd and 27th February."

By court. *By court.* "The wall where I saw marks of a shoe are pukka. The marks were by the fore part of the shoe, and as of a man ascending or descending the wall with the assistance of a rope.

Q. "How was the window secured at night?" A. "There is no window there, only a piece of a frame. It was perfectly easy of access from the room in which the treasure chest was lodged, to that in which the window was. A man might get over the walls, into the magazine yard; one part of the godowns was then unroofed. He might (G) without a ladder, by the barrack-master's scaffolding. There was not a sentry placed exactly at that part of the wall; but there were two sentries very near, but as it was a corner, he might have evaded the sentries, unless they were very vigilant. I don't know if there was Retires. any sentry near the window." (*Confirms* evidence and retires, and court Adjourn. adjourn at 3 P. M. till 10 A. M. on Monday.)

Second day's proceedings.

2nd day's proceedings. The court met, pursuant to adjournment on Monday, 30th of May, 1825, at 10 A. M.

President, members, and prosecutor all present. The prisoner brought into court.

Serjeant Geo. Patton, Part Serjeant Agra, called, sworn. Charges read, and examined by prosecutor. 3rd witness. Prosecution.

"On the morning of the 26th February last, I was ordered by Captain C. to go with him, to show him where the stick and the rope with which it was supposed that a man had escaped with money from the magazine yard, were. I went with him to the spot where the rope was lying, and from thence to the prisoner's quarters, and inquired whether Gunner D. was at home, or not. The reply was, he was not at home. Captain C. then ordered me to send some man into the town in search of him. He was found in a house outside the fort, and he sent word that he was sick, and not able to come; but at 2 o'clock he would come in. Captain C. ordered me to take four men, and that if Gunner D. was not able to walk, that he must be carried in. I went and brought him into the magazine office where Captain C. was. The prisoner walked there, but was in a state of drunkenness. Captain C. asked him what was the reason of his being absent from his duty, and of his going on in that manner. The prisoner said he knew that he had done bad enough, and that he hoped he would *forgive* him. Captain C. asked him where was the money he had taken out of the magazine, to which the prisoner replied that he had taken none; then Captain C. asked him, where the key of his chest was, the prisoner replied, 'God knows, for I don't know.' The Captain ordered me to send for a smith to pick the lock of the prisoner's chest, and the prisoner replied, "No, I will take very good care you shan't open my chest." The Captain ordered me to lodge the prisoner in the guard, which I did. I then went to the prisoner's quarters with Captain C. and Conductor K. and the prisoner's chest was opened by the blacksmith, who picked the lock, and a bag and some money was found in it. I opened the bag, and the amount in it was 75 rupees, and the remainder from that to 111 rupees was found in different parts of the chest, mixed with his clothes. I took the bag and money to the guard, and lodged it there, under charge of the havildar."

Examined by prosecutor. (B) (F) (E)

Examined by J. A. "When I lodged the prisoner in the guard, he appeared to be very much intoxicated, and I can't say whether he understood what was going on, or not. When I returned to the guard with the bag of money, I had no communication with the prisoner. He was asleep on the floor, and I did not awake him. I had seen the rope and stick before I went with Captain C., the sirdar took me there to look at them. The stick was lying inside the window,

Examined by J. A.

(E) and the rope on the ground, outside, under the window." (*The stick and rope being produced in court are identified by the witness. The stick or* Identifies rope, &c. *piece of a chokut bears, near the centre, marks of friction, as of a rope running round it by a loose loop, &c.*) Prisoner declines to examine the witness.

y court. *Examined by court.* "The wall was of considerable height, and I should consider it impracticable, without the assistance of other people and ropes, or a ladder, for a person to scale the wall of the maga-(G) zine yard, unless a rope or ladder had been previously fixed there. I don't think, without the assistance of other people, an active man could, with the aid of the wood and rope, mount from the ground outside, to the window. There was *scaffolding*, at that period; but there were two senteries where it was, always at night. I don't recollect if it was a *moonlight* night. (5) If the sentries did their duty, a man could not have ascended by *it*, into the magazine yard. I observed (C) marks of footsteps on the wall, under the window, as if of a man's shoe slipping on the wall; by a man descending or ascending it. It is impossible for me to say, whether the marks were of an *European's* or a *native's* shoe. I don't know if the prisoner was absent from his duty; my department was quite separate from his duty. I did not speak to the prisoner from the time I left the house where I found him, till I brought him to Captain C. While in *that* house, he told me he was unable to walk, &c. The rope was not in the prisoner's compound, it was lying on the rampart under the window, and there was no other access to that rampart, but through the prisoner's compound Retires. or through the window. (*Confirms evidence, and retires.*)

Interpreter sworn. Lieutenant and Brevet Captain Simmonds, 21st N. I. the interpreter, is sworn.

4th witness. Prosecution. Paunch Courie, head sirdar magazine man, Agra, called, sworn. (*Charges interpreted and explained to the witness.*)

Examined by prosecutor. *Examined by prosecutor.* "In the month of February last, two or three days after the issue of pay, I lodged a bag of 650 rupees in the (A) treasure-chest, in which a small box was left for the money; they were both locked: and on the following morning I found both locks broken open, and the money gone. I can't exactly state the day, but it was about the 22nd or 23rd when I lodged the money in the box."

Examined by J. A. *Examined by J. A.* "I had always charge of the treasure-chest, and key. I counted the rupees the day before the night on which they were taken away. I have no account of particulars, but there

(5) The *Almanack* will show this, but all natives know the rising time of the moon.

was a *written statement* (6) put into the bag with the money, exhibiting the amount. Part of the money belonged to absentees on command, and part for other purposes, for workmen, &c. I can't say how much for absentees. I paid the establishment under the superintendance of the writers who kept the accounts. I counted the money over in the presence of *Attah*, magazine sirdar. The treasure-chest (H)
was not opened after I placed the bag of rupees in it. The keys were in my possession the whole time. On going next day to take some rupees out, to pay one of the men who returned from command, about 1 o'clock, I found both locks broken open."

"No other person was in the habit of opening the treasure-chest besides myself. I was present when Captain C. opened and examined (E)
the prisoner's box. There was a bag with some rupees found in it, and other rupees strewed about the chest. I recognized the bag, by two marks, one at the top, and one near the bottom of the bag. (*Here the bag in court is shewn to the witness, who points out the marks, as also some other stains, by which he identifies the bag.*) It is the same bag I (Identifies bag.)
lodged in the box, and the same I saw taken out of the prisoner's chest. (*Rope and stick near the window.*) It was first pointed out to (B)
me by a classie, I then went and saw them, and immediately reported it to Serjeant Paton, to the conductor on duty, and to Captain C. On discovering the theft, I immediately reported it to Captain C. and the conductor on duty. There were marks of shoes on the wall and of a (C)
rope on the stick. (*Witness here identifies the rope and stick in court.*) I (Identifies rope, &c.)
do not think a *native* would have attempted to ascend or descend the wall with his shoes on."

"Besides the 111 rupees found in the prisoner's chest, the sum of 59 (I)
rupees has been recovered from the following persons, who acknowledge having received them from the prisoner, and who on hearing of the theft immediately gave them up.

Serjeant Young, Key Serjeant,.................. Rs.	9
Serjeant Hussey,.................................	12
Kurreem, native merchant,........................	16
Ramjonny, tailor,................................	7
Nuthoo, blacksmith,..............................	10
Jowair, native merchant,.........................	3
Durgie, do.	2
There was also a rupee found in his belt,........	1
Which, with those in his chest,..................	111

Make the total amount recovered, 171.(7)

(6) It would seem this paper was lost. If found in the prisoner's chest, it would alone have been evidence against him. (7) Actual loss, 479 rupees.

Q. "Describe how the locks of the treasure-chest and the box within it were broken open?" A. "The lids of both appeared to have been broken open with the head of a spear, or some instrument inserted between the locks and the hasps. These hasps *(shewn to him)* are the same as were attached to the chest and box, they were forced from the lids, the screws having been forced out of the wood." *(The screws produced and identified by the witness, one of the hasps appears to be bent and broken.)* The prisoner and court having no questions to put, evidence is explained to witness, who confirms it and retires.

Hasps identified.

5th witness. Prosecution.

Attah, magazine sirdar, called, sworn. Charges explained. Examined by prosecutor.

Examined by Prosecutor.

"I was present when the bag of rupees was lodged in the treasure-chest, I counted them, and there were 650 rupees in it. I can't exactly state the day. The bag was discovered to be stolen on the second day after Paunch Courie and myself counted the money. I saw the money lodged in the treasure chest and both locks secured. The boxes were not, to my knowledge, opened, from the time of the putting in the money to the time of discovery. I was always present when the treasure chest was opened. *Paunch Courie* and I were always employed on the same duty together. I can identify the bag containing the 650 rupees, there is a small bit taken out of the top of the bag, and a mark of a cross in ink about one-half inch from the top. This *(shewn to him)* is the same bag." *(Witness points out a dent, or small bit torn or cut out of the bag at the upper edge, and a cross about two inches below the upper edge of the bag marked in ink thus.†)*

(A)

Identifies bag.

Cross-examined by prisoner. "I do swear the cross was on the bag before it was stolen."

Examined by court. "Paunch Courie made the cross on the bag a long time ago." *(Confirms his evidence and retires.)*

Retires.

4th witness recalled.

The 4th witness, Paunch Courie, recalled, and examined on his former oath.

By court. "I did formerly make a private mark with ink, but it is worn out; there was a yellow mark in the inside of the bag, *(the bag shewn to the witness,)* and he shews the yellow mark in the inside. The cross in ink he states to have been made by Conductor *Kilgour* at the time he marked the day of the month, "26," on it." *(Witness retires.)*

6th witness. Prosecution. Examined by Prosecutor.

Serjeant Major Miller, 1st Battalion Artillery, called, sworn. Charges read, and examined by prosecutor.

"On the morning of the 28th February last, Captain C. called on me, and I went with him to the quarter-guard. Captain C. asked the prisoner, what he did with the remainder of the money he had stolen, the

prisoner replied, that he had stolen none; that he had no money but his own pay. Captain C. told the prisoner, it was useless for him to deny it, as the *jemadar* (8) could swear to the bag, and also to the money in it, which had been taken from the prisoner's chest. The prisoner then told Captain C. that he should tell him all the truth, that he had taken it. Captain C. asked him how he had effected his purpose, as it was unlikely he should have done it himself without some help. He told Captain C. that he had gone into the magazine during the day, he went and stowed himself away, until the gates were shut at 4 o'clock, and when all was quiet, he broke open the chest. He proceeded to describe the way in which he had got out, which was fixing a rope to a piece of wood inside of a window, and slinging himself down. Captain C. asked him to give an account of the money, shewing, if possible, how it had been expended. He accounted for some he had given to Serjeant Hussey, and some to a spirit-seller in the town, some to a native tailor in the town, and some to a man *(Jowair)*. I took the names of these three natives on the spot, and gave them to Captain C." (F)

Examined by J. A. "Prisoner was perfectly sober when he made this communication, very correct in his description, and perfectly aware of what he was saying, and also of the consequences. Prisoner did not appear to be influenced by hope or fear. He shewed no diffidence in telling the truth when he found he had been detected." (*Prisoner declines cross-examining.*) Examined by J. A.

Examined by court. "He told Captain C. he had done it all of himself, and from himself, and from his so saying, I certainly conceived that he was perfectly aware of the consequences. I can't say exactly what his thoughts were, or whether he expected it would be produced in evidence against him." By court.

Re-examined by J. A. "I understood that I was called upon by Captain C. to witness what passed between him and the prisoner, and that I should be hereafter called upon to give evidence to it. I delivered the copy of the charges to the prisoner, in presence of the Serjeant of the guard; I think it was on the 24th of this month. The prisoner made no observation. I told him he was to have the benefit of a general court-martial, and asked him, if he had any witnesses to call, he replied, none. (*Witness confirming his evidence, retires.*) Re-examined by J. A. Retires.

Serjeant Thomas Heany, Brigade Serjeant of Artillery, called, sworn. Charges read. *Examined by prosecutor.* 7th witness. Prosecution. Examined by Prosecutor.

(8) Paunch Courie, 4th witness.

(F) "I was in command of the quarter-guard on the 28th February last. The prisoner was confined under my charge. I did bring him out to you in presence of the Serjeant Major. Captain C. asked him, what he did with the rest of the money he had taken, he denied it at first. Captain C. told him the *jemadar* (8) knew the bag, and the rupees that were found in it. The prisoner said, he would tell the truth, that he did take the money. Captain C. asked him, if there was any one with him when he had taken the money, he answered, no one but himself; that he had stopped within the magazine until the evening: when he found that all was quiet, he took the money; that he let himself down by a rope out of the window. Captain C. asked him, what he had done with the rest of the money, he said, he gave 20 rupees to Serjeant Hussey, and also to three or four men in the bazar; a tailor was one of them."

Examined by J. A. (F) *Examined by J. A.* "The prisoner was perfectly sober when he confessed the theft to Captain C. I heard no promises of forgiveness or threats of punishment held out to the prisoner to induce him to confess the crime. His confession appeared voluntary. He did not state the amount of rupees he had taken out of the magazine." (*Prisoner declines cross-examining, witness confirms evidence, and retires.*)

Retires.

Prosecution closed. The prosecution is closed.

The prisoner being called on for his defence.

Defence. DEFENCE. States, that he submits to the favorable consideration of the court, the great length of his confinement, (9) and the hardships and privations he had endured during the whole period of his confinement; that he has not been allowed a cot to sleep on, and that so far from any indulgence having been granted to him, his confinement has been most rigorously severe, and so much so, as frequently to injure his health.

Character. 1st witness. Defence. Prisoner calls on Captain C. for a character. Captain C. examined on his former oath.

Q. "Be pleased to state what you know of my character." A. "The prisoner has been nearly three years under my command, and has always conducted himself to my satisfaction, until the crime with which he is charged, and this is the first time of his having been confined by me." (10)

(9) More than three months.

(10) With regard to character, previous to being made a laboratory man—as such men are appointed from the Artillery, by selection, as intelligent, smart, and good men.

"The prisoner, having no further evidence to adduce, throws himself on the mercy of the court. The defence is closed." Defence closed.

"The court adjourn at ¼ past 3 P. M. till to-morrow, at 11 A. M." (11) Adjourn.

Third day's proceedings. 3rd day's proceedings.

"The court, pursuant to adjournment, met with closed doors, on Tuesday the 31st of May, 1825, at 11 A. M."

"The whole of the proceedings read and compared with the fair copy." Read over & compared.

"FINDING. The court having maturely weighed and considered the whole of the evidence on the prosecution, and of the defence, do find the prisoner guilty of the whole of the first and second charges exhibited against him." Deliberation. Finding.

"On the third charge, guilty of "absenting himself without leave from his duty, and not returning till brought back on the 26th February, 1825, in a state of drunkenness; when his box was examined, and in it was found the bag in which had been placed the sum of 650 rupees, stolen by the prisoner out of the box within the treasure-chest in the Agra magazine; and that the said bag, when so discovered in the prisoner's box, contained in part, and that the prisoner's box contained the sum of 111 rupees, specified in the third charge."

SENTENCE. "The court having found the prisoner Gunner Philip, (alias Phillip) Dogherty, laboratory man of the Agra magazine, guilty of the charges, as above stated, do adjudge him, the said Gunner Philip (alias Phillip) Dogherty, to be transported as a felon for seven (7) years. Sentence.

(Signed) J. Delamain, Lieutenant-Colonel,
President.

(Signed) W. P. Cooke, Captain,
Deputy J. Advocate General,
Meerut Division,
Conducting the trial.

Approved and confirmed,
(Signed) Edward Paget, General,
Commander-in-Chief in India.

"The Governor General in Council *concurs* (12) in the sentence of

(11) Such adjournments are useful. (In this case the court had only half an hour left, which was inadequate time to read over the proceedings, and deliberate,) as the court may properly desire time to consider the evidence and the law of the case.

(12) This concurrence is requested by Section 4, 4, Geo. iv. c. 81.

transportation for seven years, passed by the court-martial at Agra on Gunner Phillip Dogherty, which has been approved and confirmed by H. E. the Commander-in-chief.

(Signed) Amherst.
(Ditto) Edward Paget.
(Ditto) John Fendall.
(Ditto) J. H. Harington.

The prisoner Dogherty is to be sent to the presidency by the earliest convenient opportunity.

By order of H. E. the Commander-in-chief.

(Signed) W. L. Watson, Adjutant General of the Army.

(A) 650 rupees.
(B) Stick and rope.
(C) Marks of shoes.
(D) Attempt to kill himself.
(E) Prisoner's box examined.
(F) Confession.
(G) Scaling wall.
(H) Money counted over, day before.
(I) Money recovered.

Prosecution.

1.—Witness, Captain Chadwick, p.
2.—Do. Conductor Kilgour, p.
3.—Do. Serjeant Paton, p.
4.—Do. Paunch Courie, p.
5.—Do. Attah, p.
6.—Do. Serjeant Major Miller, p.
7.—Do. Serjeant Heany, p.

Murder.

Section 15.—Murder.

At an European general court-martial, held at Kurnal, on Monday, 4th of January, 1830, for the trial of Serjeant Bryan Smith, 3rd company, 1st battalion of Artillery. (1)

(1) There was a Court of Inquest held on the 24th December, 1829, on the body of the late Staff Serjeant Malcolm, when it was unknown who committed the murder. Also, a Court of Inquiry, on the 25th December, 1829, which lasted six days, composed of a Lieutenant-Colonel, president, one Captain and three Lieutenants, members, with an interpreter. On the first day, it became known, that Smith was accused by Gunner Spencer. The J. A. of the division, who conducted the case, was of opinion that *Smith* should not be present, and the court, though some of the members at first wished him to be present, acquiesced in his opinion, that as they were sitting as a Grand Jury, he should not be present. Both documents were before the court.

President.

Lieutenant-Colonel W. S. Wish, H. A. (2) Court.

Captain W. Hough, D. J. A. G. Sirhind Division.

Interpreter—Lieutenant Westmacott, 37th N. I.

The court met at ½ past 11 A. M. in the mess-room of the 5th Light Cavalry. President and members all present.

The prisoner, Serjeant Bryan Smith, &c. is brought into court, and called to the bar by name.

The court order his irons to be taken off while in court.

Read the division and station orders, &c. directing the formation and assembly of the court: and warrant of the Brigadier General, the president's, and J. A.'s warrant. Orders. Warrants. President sworn.

President sworn.

J. A. "Serjeant Bryan Smith, have you any objection to offer to any member of this court?" A. "I have none." Challenges. Members, &c. sworn.

The members are sworn. The J. A. is sworn.

The charge is read to the prisoner and entered as follows:

CHARGE. Serjeant Bryan Smith, 3rd company, 1st battalion of Artillery, placed in confinement and charged as follows: Charge.

"With having, in the artillery camp, in the cantonment at Kurnal, on the night of the 23rd, or morning of the 24th December, 1829, feloniously, wilfully, and of his malice aforethought, murdered, or having aided, assisted, or been concerned in the murder of (3) Staff Serjeant Peter Malcolm, of the same company and battalion, by beating and strangling him; also by fracturing his skull with some instrument, weapon, or implement; also by inflicting several wounds on his head with some pointed instrument or weapon, and thereby inflicting a mortal wound or wounds, of which he (Staff Serjeant Peter Malcolm) died on the night or morning aforesaid."

J. A. "Serjeant Bryan Smith, (who acknowledged himself properly described,) are you guilty, or not guilty of the charge?" A. "Not guilty." Plea.

J. A. "The court direct all witnesses to withdraw till called for."

Serjeant Alexander Gregory, Pay Serjeant, 3rd company, 1st battalion of Artillery, called, sworn. Charge read. Examined by J. A. 1st witness. Prosecution.

(2) Two Majors, four Captains, and eight Lieutenants, members. The court ordered by Brigadier General (now Major General Sir J. W.) Adams, K. C. B. immediately on reading the Court of Inquiry, &c.

(3) It had been given out that others were concerned, no doubt with a view to distract attention, and though *Spencer* broadly accused *Smith* as the man whom he saw striking Malcolm, still it was thought proper so to frame the charge.

(A) "A little before 8 o'clock on the evening of the 23rd December, 1829, I was in company with the prisoner and Staff Serjeant Malcolm;
(B) when I went into the tent, they had a bottle with about three drams of brandy in it, they asked me to sit down and have a glass of brandy. I did so, and remained some time. During the time I was there, the orderlies of companies and Serjeant of the quarter-guard came in to make their report, and the detail was given out by Malcolm. The
(C) prisoner went out for his hooqqu, came into the tent with it, took two or three whiffs, went out of the tent, and did not return while I was there. After the two orderlies had gone, Serjeant Fitzmaurice and I
(D) remained between 10 and 15 minutes, and we saw Malcolm into bed. Fitzmaurice went away first, and I followed, a minute or two after. I went to my tent. I laid down on my cot, and remained there till Serjeant F. came to me next morning a little before gun-fire, to get up and assist to get Malcolm up. I got up immediately, thinking M. had been in liquor. While I was going down, Serjeant F. got a light, and entering the tent along with a sentry *(Bains)*. I followed into the tent,
(E) and found Malcolm lying on his back on the ground *dead*, with marks of violence on him. I sent Serjeant F. for the officer of the main or line guard; he returned with Lieutenant Larkins. After the alarm was
(F) given, several persons were going out and into the tent (M.'s); I took notice that the prisoner never came to my assistance, and I thought his being a Serjeant of the *same* company, and belonging to the *next* tent, that it was from him and the rest of the non-commissioned officers of the company that I was to look for assistance, to try and find out what was the means of M.'s death. A little after, about day-break, a parade was ordered for all hands with their arms, I took
(G) notice that *Smith* was late in turning out that morning. I sent Corporal Stacey to his tent; just at the time I saw him coming out of the opposite door of his tent. He came up and joined the parade. Lieutenant L. and Staff Serjeant K. went and examined the men's arms in the ranks. After this, the non-commissioned officers fell in; their swords were examined. I noticed that *Smith* was rather unsteady. In the forenoon while Gunner Spencer was prisoner in the quarter-guard, he was brought out to Lieutenant Brind. He was talking with that officer, who ordered me to take *Smith* in charge, and allow him to keep conversation with no one. While Spencer was being taken to Lieutenant B. I noticed *Smith* very unsteady and troubled, mentioning
(H) these words, "*That he did not care, or did not care a d——; if they spoke the truth, he would clear himself.*" Lieutenant B. told me to take him to my tent, and put him under charge of sentries. He was af-

terwards ordered to the line-guard. While Lieutenant B. remained there, there was a *hooqqu* bottom brought up, all dented and blooded, which (C)
I knew to be the property of the prisoner. A *looking glass* was taken (I)
out of the prisoner's tent with a little blood on it. I took it and shewed it to Lieutenant B.; it was given in charge to Serjeant Sheridan, commanding the quarter-guard. I was in the tent of the deceased when the articles there were examined. There were three boxes, a table, a cot, the sheet all blooded, which deceased had been lying on; a pillow and pillow-case, both bloody. It appeared as if the deceased had been struck on the cot. There was a lamp on the table; there was a fire-place in the centre of the tent, where there were the remains of a *charcoal* (J)
fire; there were some plates and a knife and *fork* on the ground; there (K)
was a sword and belt hanging upon the pole in the tent, the sword was the deceased's." (I)

J. A. "I produce the *bedding* found in the tent of the deceased, it was delivered to me by Serjeant Gregory and Staff Serjeant Keys; it has remained in my possession ever since." Bedding produced.

The witness places the bedding on the ground in the same manner as he found it in the tent, and it appears that there is blood on the sheet on which Malcolm laid. The witness explains that the sheet was partly washed after he saw it, by his order; (4) but that there was blood on it before it was washed. The court remark, that it is apparently stained with blood; also, that there is the appearance of blood on the pillow-case, and, on taking off the pillow-case, the pillow itself appears as if stained with blood. Also, that the goodree, or bed-quilt, has marks on it, as if stained with blood. Witness identifies the above. Identified.

J. A. "I produce a box which contains various articles, delivered to me by Serjeant Gregory and Staff Serjeant Keys, as the property of Serjeant Smith, and it has been in my charge, under lock and key, ever since." Box produced.

Witness identifies a small *hooqqu* bottom, which he knows to belong to Serjeant Smith. The court remark it to be indented on two sides, and at the bottom rim with stains apparently of blood in several places where it is indented. Identifies. (C)

Q. Was the *hooqqu* bottom in its present state when you saw it at Malcolm's tent on the night of the 23rd December?" A. "It was not. The prisoner, while at Malcolm's tent on the night of the 23rd (M)
December, was dressed in his regimental jacket, and white trowsers, (N) Hooqqu bottom.

(4) Bloody clothes should never be washed.

plaited. I do not recollect as to his *cap*, if he had any there. I think he was uncovered. On the morning of the 24th December, I went with *Keys* to *Smith's* tent, and opened his box. We found a dirty shirt, spotted with blood about the collar; we took that away. We found a handkerchief with five rupees, a thimble, and a pencil-case. The handkerchief was of the same pattern as Malcolm's; it was similar to one I found in M.'s tent. (*Points out one of the same pattern.*) The prisoner did not take away his *hooqqu*, he left it in the (M.'s) tent."

Identifies handkerchief.

(C)

Cross-examined.

Cross-examined by prisoner. "I can't positively say if the handkerchief I found in the tent of the deceased was hemmed or not. There was one spot of blood on it. I am not aware, whether he was asleep or awake, when the alarm was given on the morning of the 24th December. (*Slow in turning out.*")

(G)

By court.

Examined by court. "I could not positively say whether his unsteadiness on the morning of the 24th December was occasioned by alarm, mental agitation, or from drinking. His appearance was unusual with him. *Malcolm* was under the influence of liquor. He got into bed without assistance; we covered him up afterwards. The prisoner did not appear to press the deceased to drink that evening. No quarrel or words took place between Malcolm and prisoner, while I was there that evening. (5) The prisoner was not drunk when he left Malcolm's tent; he was fit for duty. The men had been under arms three or four minutes, when I sent Stacey to call the prisoner." Witness confirms evidence and withdraws.

(B)

Prisoner is remanded to prison, and his irons again put on. The court adjourn at 3 P. M. till to-morrow, at 11 A. M.

2nd day's proceedings.

Second day's proceedings.

Tuesday 5th, January, 1830.

The court met this day, pursuant to adjournment, at 11 A. M. President and members all present. The prisoner brought into court, and his irons taken off.

1st witness recalled.

Serjeant Gregory, 1st witness, re-called and examined on his former oath. *J. A.* (*Shows a sword to witness.*) "It is Malcolm's sword. I found it in his tent next morning, and I observed a stain of blood on the guard of the sword, and also on the frog of the belt." The court remark that there appears to be marks or stains on the frog of the belt and guard of the sword, but they can't say, whether or not they

(5) The *prisoner* had been reported to Lieutenant Brind, commanding the company, and the deceased had that evening taken *him* to Lieutenant B. to beg him off; the *cause* explained in Note 59.

are stains of blood. "I looked at the knife and fork, and did not observe any marks of blood on them on the morning of the 24th December. There was a fire burning in Malcom's tent when I left it, on the night of 23rd December; it was not out then." (J)

Examined by the court. (Quarrel.) "Sometime ago, about two or three months, there was some altercation in barracks between them; it was about the prisoner being placed in arrest; it was not a serious one: some words passed between them. I could not say but that they were since on friendly terms. I never saw them otherwise. I left a lamp on the table burning in the tent when I left it. While I was in the tent they appeared to be on friendly terms." *(Witness retires.)* (O)

Witness retires.

2nd witness. Prosecution.

Lieutenant A. Abbott, adjutant of Artillery, called into court, sworn, and examined by J. A. (*Produces a plan of the Artillery camp.*) "I made the plan, and measured the distances. The distance between Malcolm's and Smith's tent, between Smith's and No. 7, 3rd company, and that between Malcolm's and the paul, were measured with a 10-feet rod, the rest of the distances were paced, owing to my having no instrument for the purpose." (*Retires.*) (6)

Retires.

3rd witness. Prosecution.

Serjeant John Fitzmaurice, 3rd company, 1st battalion of Artillery, called, sworn. Charge read. Examined by J. A. (*First part nearly same as 1st witness.*) This witness staid a little after him. "At 5 o'clock in the morning, 24th December, I went the rounds. I came into the guard tent. Knowing that Malcolm was three parts *drunk* at night, and that he was in the habit of having a *fire* in the morning, and it being very cold, I went down to his tent, at about 20 minutes past five. I lifted up the door of the tent. I went and knocked against him; he was lying on the broad of his back. The place was so dark, I could not see my hand, and I was frightened out of my wits. I tipt him twice with my toe on the soles of his feet, and asked him to get up. I put my hand down on his belly, and found him quite cold. I stirred him once or twice with my hand, and put my hand round his head, and found it covered with blood, quite congealed. I went out to the next sentry (*Baines*), and told him to come and assist me; he came in with me. I ran out to Serjeant Gregory and gave the alarm, and left Baines in the tent. I went to No. 8 tent, 3rd company, but found no light. I got a light, and Serjeant Gregory came into the tent. We found Malcolm's body in a horrid state, covered all over with blood. We could hardly distinguish any wounds, owing to the quantity of blood. I went and reported it to Lieutenant Larkins. Serjeant Smith (B) (J)

(6) The plan omitted, not being thought necessary to explain the case.

was not in Malcolm's tent when I went there on the night of the 23rd December. (7) On the morning of the 24th December, Gunner Baines
(P) first noticed a *chest* of Malcolm's to be open. I observed the lid to be open; it was a clothes chest. Some of the jackets or waiscoats were
(C) tumbled. (8) I observed a *hooqqu* on Malcolm's table; it was out. It
Identifies hooqqu. was *Smith's*. It was then in good order. I had it my hand." (*Identifies that in court.*) (*Prisoner declines cross-examining.*)

Examined by court. "The hooqqu was shewn to me next morning in
Retires. M.'s tent." (*Retires.*)

4th witness. Prosecution. Gunner John Church, 3rd company, 1st battalion, Artillery, called, sworn, and examined by J. A.

"I belong to the same tent as the prisoner. I was on guard on the night of the 23rd. On the afternoon of the 24th December, between 2 and 3 P. M. I went in front of the prisoner's *looking glass* to comb
(I) my hair. I started back on perceiving blood on it. Gregory and Grange were present. I shewed it to them. On the 22nd, I had the glass in my hand; there was no blood on it then. (There were several
Identifies glass. men in the tent, I don't recollect who they were.") Witness identifies the looking glass in court. (9)

Cross-examined. *Examined by prisoner.* "I don't know, whether it was the morning or afternoon of 22nd." (*The court observe that there are stains on the*
Retires. *glass.*) Retires.

5th witness. Prosecution. Corporal H. Stacey, 3rd company, 1st battalion, Artillery, called, sworn, and examined by J. A. "About ¼ or 20 minutes before gun-
(C) fire, (24th,) I found a hooqqu and snake, in Malcolm's tent, belonging to the prisoner. I have smoked out of it often. I was the first person who found it. The hooqqu and snake were lying apart, on the N. side of the tent, going in. (10) I found a tent-pin in a classie's paul, next to Malcolm's tent, on the S. side. I observed to Gregory that the hooqqu was indented and bloody, and that I did not like the looks of it. I smoked out of it the afternoon before, it was not, then, in
Identifies hooqqu. that state." (*Identifies the hooqqu, snake, and a tent-pin.*) The court remark a little blood upon the tent-pin.

Cross-examined by prisoner. "I smoked out of the hooqqu at the
Cross-examined. time you were dressed to go with Malcolm to Lieutenant B." (11)

(7) Smith came in while he was there.

(8) No doubt the prisoner was trying to change his clothes. See 10th witness.

(9) Must have been used, while changing his dress, to see if there were marks of blood about him, and his fingers have marked it.

(10) It had been left on the table. 1st witness. (C)

(11) See Note 5.

Examined by court. "I can't say how far the hooqqu was lying from Malcolm's head." (*Retires.*) Retires.

Serjeant Charles Sheridan, 4th company, &c. called, sworn, and examined by J. A. "When the prisoner was confined on the 24th December, I found part of a *shirt*, it was stained apparently with blood, and then very wet. I could have wrung water out of it. I found it in the centre of the prisoner's cot, under the sulleetuh, between it and the string of the bed. I found it in the guard-tent; (12) it was rolled up. I supposed it to be the prisoner's." (*Identifies the part which appears to the court to be stained.*) "I found the part of the shirt about ½ an hour after he was confined. He was confined between 1 and 2 P. M." (*Prisoner declines cross-examining.* Retires.)

6th witness. Prosecution. (M) Identifies shirt. Retires.

Bombardier Thomas Barker, 3rd company, &c. sworn. Examined by J. A. "About 8 o'clock on the morning of the 24th December, I met the prisoner and said to him, "this is horrid work (Malcom's murder). He said, it was; he hung down his head. I observed some spots of blood on the right side of his *shirt-collar*. I said to him, "Smith, on such a day as this! this looks very suspicious!" I advised him to change it. He told me he had been fighting in the bazar. I said, Malcolm was glad he had got you over your *confinement*. He turned his back, and we parted." (*Identifies a shirt produced as worn by prisoner on the 24th.*) The court remark some small stains on the shirt-collar. "I mentioned it to *Stacey* after *Smith* was confined. *Keys*, *Stacey*, and I went to the guard tent. I told the prisoner not to deny what I had said to him about the shirt. He, at first, did not mention where the shirt was. He said he would not deny it, and said it was in his box. It was found in his box. *Keys* showed it to me. Prisoner had on a black stock that morning."

Prosecution. witness. (H) (M) (O) Identifies shirt. (M)

Cross-examined by prisoner. "I don't know if he changed his shirt immediately after I spoke to him. I could not see if the arms were unpiled when I made the observation (*shirt*)." Cross-examined.

Court adjourn at ½ past 3 P. M. till to-morrow, at 11 A. M. Prisoner ironed, and remanded to prison. Adjourn.

Third day's proceedings.

Wednesday, 6th January, 1830. 3rd day's proceedings.

Court assembled at 20 minutes, 11 A. M. President and members all present. Prisoner brought into court. His irons are struck off in court.

(12) The prisoner was for duty that morning, and commanded the guard. See Note 41.

Tent, &c. viewed. The court proceed to view the tent of the late Malcolm, which is pitched in the mess compound, and the bed and several articles, his property, placed as they were found on the morning of the 24th. Prisoner present. Court remark, that the table was placed close to the pole, to the S. of it. His bed close to the N. wall or kunnat, and lamp on the table; a box to the W., another to the E., and a third on the E. side of the tent in the opposite corner; all three against the kunnat. Court observe a drawer to the table, and that it is to the W. side of the tent. In the drawer, court find a three-prong fork, marked with stains apparently of blood, and a spoon stained with blood; and where the fork was found, the bottom of the drawer appears stained apparently with blood. (13) Also, a looking glass hanging over the bed, with stains of blood.

1st witness recalled. Serjeant Gregory, 1st witness, re-called, and examined on his former oath, by J. A. (*Court return to the mess-room.*)

"On the morning of the 24th, I observed the key in the drawer. I did not open it that morning; I opened it this morning. I locked it when I took charge of deceased's things. All the boxes were found unlocked." (14) *Retires.*

Retires.

8th witness. Prosecution. Serjeant Peter Ditchfield, 3rd company, &c. *sworn*, charge read, and examined by J. A. "Betwixt 15 and 20 minutes to 9 P. M. 23rd December, I saw deceased; he came out of his tent. In coming out, he fell down, when slipping into the trench near his tent, he tried to recover himself and made a second stumble. I got hold of his arm, and lifted him up. I took him to Key's tent by his desire; brought him

(J) back to his own. There was a native, *Kooseeal,* (15) in his tent, when I left him. It was about 15 to 20 minutes to 9, when I left him. I observed nothing in Kooseeal's hands; he was making Malcolm's bed, who was then dressed in a long blue coat. I did not observe the rest of his dress. A *charcoal fire* was burning th[illegible] (and a light in the

(B) tent, on the floor, near the tent-pole. No one else in the tent. (16) *Malcolm* was *drunk* when I saw him, the whole of that night. The E. door was open when I left the tent. He sat against the edge of his cot when I left him. Kooseeal sometimes staid there till seven or eight o'clock at night. Can't say if he made a practice of sleeping there." (*Prisoner declines cross-examining.*)

(13) The deceased had been eating meat; but the fork, on examining it, with a magnifying glass, had evident marks of hair on it.

(14) Rest of evidence as to custody of property; and no access to it by others.

(15) 15th witness.

(16) This was after the time *Gregory* (1st witness) had left the tent.

Examined by court. "The deceased *(drunk)* was helpless enough. I supported him to and from *Keys*, by holding him by the arm." (*Retires.*) Retires.

Gunner T. Baines, 3rd company, &c. sworn, charge read, and examined by J. A. (17) "I lifted up the screen of the door. It was down when I first saw it. I felt the deceased's body very cold. I felt a *case-bottle* by his thigh; there was a cork in it; it felt very heavy. I heard no noise that night, or next morning. (18) 9th witness. Prosecution. (F) (B)

Cross-examined by prisoner. "His *(deceased's*, on the morning of the 24th,) thighs were bare; he had a shirt on, as it appeared to me. Can't speak to the rest of his dress." (*Court cleared. Court opened.*) Retires. Court cleared and opened.

Serjeant Gregory, 1st witness, recalled, and examined on his former oath by J. A. Witness produces the sword of the prisoner, and belt marked and $\frac{A}{2}$ $\frac{C}{2}$ B. S. 3rd company, 1st battalion, Artillery. (19) Retires. 1st witness recalled. Retires.

Gunner William Spencer, 3rd company, 1st battalion, Artillery, called, sworn, charge read, and examined by J. A. (20) 10th witness. Prosecution.

"On the evening of the 23rd December, I got off my cot at a little before 10 o'clock. I heard the ghurrie strike a little after. I heard a *groaning* in the tent of the deceased. I went out. When I got opposite deceased's tent, I listened to hear what the noise was, as I was going to the privy. I saw the prisoner come out of the tent of deceased. I went on to the privy. While there, I heard a *noise* in the *tank*, (21) I turned myself round, and saw the prisoner. He asked me, what I did there. I told him. I came away towards my own tent, till I got opposite to that of the deceased. I stopped to hear the same noise. I heard the same noise. The prisoner overtook me; *he caught hold of my arm, and asked me, what I was stopping there for, and pulled me into my own tent.* He took me up to the light against his own box. I looked at him, and *asked him, what made the deceased groan so. He said, two or three of them had been drinking together, and that the b—— was drunk.* He asked me, if I knew where his *hooggu* was? I told him I did not. He told me to look for it. I could not find it. The pri- (B) (C)

(17) First part merely confirmatory of 3rd witness.

(18) Was sentry in the front of the lines at 11 P. M. and relieved at day-break on 24th December.

(19) "Court ordered the scabbard to be cut open, to see if there are any marks of a bloody sword, or stains on the leather, inside. No stains observed."

(20) This witness belonged to the prisoner's tent, as did *Robinson*, *Hannah*, and *Stanney*, witnesses 11, 12, 13.

(21) It was dragged and drained, supposing he might have flung some clothes, or implements into it.

soner said, he recollected where he had left it, in Malcolm's tent; he directly went out of his own tent, and I followed him. I saw him opposite the little paul near the deceased's tent. I saw him go into the tent of deceased. I ran up to the door of deceased's tent, and
(Q) peeped in. *I saw the prisoner strike the deceased twice.* I don't know with what he struck him. I ran into my tent and awakened up Robinson, and said, for Christ's sake, wake, *for I think Smith is murdering Malcolm.* I asked him to listen how he was groaning. *Robinson* said, "Go and lie down on your cot." I had just left Robinson's cot, when *Smith* came *in, and put out the light* in our tent. Stanney and Hannah were lying drunk on one cot. Between 1 and 2 P. M. I heard Stanney and Hannah talking together. I asked H. if he could get up and get a light. He asked me what for? I told him I would give him a rupee to get grog. He went and brought a light; he went and brought eight drams. While we (H., S., and self,) were drinking, *Smith* came into the tent. H. asked him, if he would have a dram of grog. He drank a dram, and sat down on Grange's cot. H. said he would go and lie down on his cot. I gave H. another rupee, and he brought four drams. Smith said, as long as he drank, he would be a *case-bottle.* He went out, and returned in four or five minutes with a case-bottle of grog. As soon as that came in, I got *drunk,* (22) and was sent to the guard, for being absent from parade next morning. When I awakened in the guard tent next morning, and found myself sober, I heard them talking about the death of Malcolm. I told the sentry I knew who it was that had done it. I believe *Bayle* was sentry. He told me to take care what I was saying. I told him I knew very well what I was saying. Corporal Browne came to the guard tent, and *Smith* after him. Bayle said, "Spencer knows who did this murder." *Smith* asked, who it was? *I told him it was him, and he knew* it very well. This is all I knew about
Retires. it." (*Witness confirms his evidence, and retires.*)

The court adjourn at 3 P. M. till to-morrow at 11 A. M. The prisoner remanded to prison.

4th day's proceedings. *Fourth day's proceedings.*

Thursday, 7th January, 1830. The court met this day at 11 A. M.
Member sick. President and members all present, except Lieutenant Inglis, sick. Prisoner brought into court; his irons struck off. Medical certificate read to court.

(22) The prisoner's object was to make them drunk, so that *Spencer* might not recollect what had occurred, and to enable him, undiscovered, to put away all things exhibiting marks of blood.

The prisoner states his desire to have some person to assist him to take down evidence, and to prepare his defence. The court adjourn at half past 12, till to-morrow at 11 A. M. to enable him to procure one. . Prisoner remanded to prison. Clerk.

Fifth day's proceedings. 5th day's proceedings.

Friday, 8th January, 1830. The court met at 11 A. M. President and members all present, except Lieutenant Inglis, reported sick. Prisoner brought into court, and his irons struck off.

Prisoner requests Gunner Hasted, 3rd company, &c. to be allowed to write in court for him; which court allow. Court also, at request of the prisoner, permit Mr. Surgeon Ross, 37th N. I. to assist the prisoner, and to be in court for that purpose. Clerk. Amicus curiæ.

Gunner Spencer, 10th witness, recalled, and examined on his former oath by J. A. 10th witness recalled.

"I did not hear any groans before I got off my cot. When Smith came out of Malcolm's tent, he had on a long straight *blue* coat, a pair of *white* trowsers, and a *cap* like that now in his hand, *(a forage cap, covered with oil-skin.)* I heard something like a splashing in the *(tank)* water. Prisoner was eight or 10 yards from it; I saw no one else near it. *Smith* left the tank the same time I did; and was about 20 yards in my rear. His dress *(when he pulled me into the tent, &c.)* was as before stated. I did not remark the clothes then, and did not observe any marks or stains on them. His box was shut, and the light standing on it. At this time, no one was awake in our tent. He looked very *confused,* when he caught hold of my arm and pulled me into the tent. The prisoner changed his dress a little after gun-fire on the night of the 23rd. He took off his regimental jacket and sash, and put on the straight *blue* coat. The prisoner entered the deceased's tent by the *door facing the 4th company.* When I peeped into the tent of deceased, there was a *charcoal fire* in the centre. *I did not go to sleep that night at all!* It was between 1 and 2 P. M. When I sent H. for a light, I got him (H.) up, to keep me company, for the rest of the morning; as I did not think *Smith* had killed *Malcolm.* (23) When the prisoner came in and drank the liquor, he was dressed as before. I did not observe any thing particular in his countenance: did not observe him much. He was sitting on *Grange's* cot; after drinking a dram he went to his own cot. He came back again to G.'s cot. He sat there till the grog was out, which I sent for. H. and *Smith* were bargaining for a pair of trowsers. I don't recollect seeing him go to his box. Smith went (M) (J)

(23) The witness was afraid to go to sleep, as he might have been murdered himself.

out for a bottle of grog; was absent four or five minutes. S., H., and myself were drinking with Smith. The case-bottle he brought in was full of liquor. After I drank a dram or so, I was drunk, and know not

Court cleared. if the bottle was empty. (*The court cleared. Court is opened.*) Robinson was awoke when Smith came in, and put out the light. When

(Q) I saw the prisoner strike Malcolm, he (M.) was lying on the ground. I did not observe any struggling between them. I did not observe at that time any other European or native near Malcom's tent. Corporal Willis (24) came into our tent about gun-fire on the night of the 23rd December. A native girl came into our tent at 7, and I sent her away at 9, P. M. that night; she left our tent. I don't know who she is." (25)

"I did not see Smith go into any tent but Malcolm's that night.

Identifies blue coat. (*Identifies the blue coat produced, as the same kind as the prisoner wore*

(M) *on that night; also the cap, as like that worn by prisoner.*) Could not see if the trowsers were plain or plaited. I could not see above the knee, as the coat covered the upper part. Saw prisoner smoking before gun-fire that night; but did not see the hooqqu afterwards. I do not know with what weapon *Smith* struck the deceased. He struck towards

(Q) his head; his feet were towards the (*deceased's*) door. Prisoner's back was towards the door; his face towards the park. The weapon appeared to be about two feet long, apparently of good substance; not glittering.

Cross-examined. *Cross-examined by prisoner.* "You undressed after gun-fire, that night, in the tent. He came back into the tent, after undressing, almost directly; about the time I turned away the native woman. He was speaking to the native girl, at the time he asked me if I had any grog. I believe he put his sash somewhere about his cot; I never noticed.

(R) I did not observe any *moonlight* that night. When I went to the privy close to the *tank*, I distinguished *Smith* by his dress and voice, and because he was close to me. I have seen others wear the same kind of coat. (*Charcoal fire, size of.*) "There was a good pan-ful." Q.

(J) "*How do you know it was* Smith *striking?*" *A.* "*Because, I followed him so quickly out of the tent, I did not lose sight of him! I followed him so closely, because I heard the groaning of Malcolm so, and because Smith went out so quickly for his hooqqu.* When struck, Malcolm appeared to be in his shirt. When I saw you near the Lascar's paul, I was standing against my own tent-door. That next the 4th company's

(24) 14th witness.

(25) Could not find her out; but she saw nothing.

lines. (26) I don't know who lit the light in our tent, or who put it on the box. As soon as I had seen *him* (*Smith*) strike *Malcolm*, I came into our tent, awakened Robinson; *he*, then, came in, and put out the light. To the best of my knowledge it was after 10 o'clock; there is a difference between the ghurries; one had struck 10 o'clock. After this I laid down on my cot till I sent for the liquor; and never went to sleep. I heard you bargaining about trowsers, but don't know what agreement was made. I did not hear that the bottle of grog you brought in was to pay for the trowsers. I did not give you a pair of my trowsers. I don't *recollect* (that I was in any other place but the privy during the night or morning); after I began drinking; after I was drunk. I was not drinking before 10 o'clock." (27)

Re-examined by J. A. "The charcoal fire was burning sufficiently clear to throw a light over the inside of Malcolm's tent." (J)

Examined by court. Q. "*Why did you not give the* alarm?" A. "The time I saw Smith first strike Malcolm, Smith came and put out the light, and I was afraid to leave the tent. (28) There has been no quarrel or misunderstanding between me and the prisoner. I always liked Smith as my father; for he always behaved as such to me. Q. "*What do you mean by* 'I *did not think Smith had killed Malcolm?*'" A. "I did not think he had the heart to kill him. At the time I awoke *Robinson*, the *groans* might have been heard two or three tents off. I did not observe from what quarter the wind blew. When I followed the prisoner out of our tent, I thought there must be something in it, by his going out so quickly after my saying about Malcolm's *groaning*. During the night the prisoner did not lie down on his tent at all; he was about the tent, in and out of it. When he caught hold of me by the arm, he appeared to be a little *confused*. I was not told off to Smith's tent. I made an exchange to it, the first day; I have been in no other tent. I got exchanged to it, because my box and cot were in Smith's. When I first saw Smith coming out of Malcom's tent, I had no conversation with him. I knew him by the dress he had on; the same he had down by the tank. I had not been asleep, on that night, before I went to the privy. After striking Malcolm, the prisoner came into his own tent, and put out the light. It might be 10 or 11 minutes, that he was in M.'s tent; I can't say how long. I saw the prisoner strike two blows. They made a noise, as if any (M) (Q)

(26) Looking from it towards Malcolm's.

(27) Could he have proved this, he would have argued; a drunken man might have mistaken my person!

(28) See Note 23.

one was struck with a stick. I don't think the blows could have been heard in my tent. I did not see the prisoner take any thing out of the tent, or pick up any thing on the way, but I saw something in his hand, when in the tent." (29)

The court adjourn at 3 P. M. till to-morrow at 11 A. M. Prisoner remanded to prison.

6th day's proceedings.

Sixth day's proceedings.

"Saturday, 9th January, 1830. The court met at 20 minutes past 11 A. M. President and members all present, except Lieutenant Inglis, sick. Prisoner brought into court, and his irons struck off."

10th witness recalled.

Gunner Spencer, 10th witness recalled, and examined by court, on his former oath. "When I followed Smith, I was the distance of my tent from Malcolm's. When I got outside my tent, I saw Smith opposite M.'s tent. He was not then *going* into M.'s *tent*. He was going towards the little *paul* beyond it. I did not see him enter *it*. I
(Q) was looking into M.'s tent, half a minute, more or less, or the time it would take to strike a man twice. When I first saw Smith coming out of M.'s tent, I might be five or six yards off. I don't know if the prisoner took any notice of me when he came out. It was not so dark, but I could speak as to his person and dress. The blows were very heavy. I heard the groans while Smith was striking M. The lascar sentry (30) was at the other side of the paul. I don't know at what distance. I believe I am 24 years of age yesterday. I have been three years in the service. I landed at Calcutta on 25th May, 1828. I joined here about five weeks ago, with the last draught. I never did duty as a soldier till I landed at Calcutta. While at the privy I only saw Smith. I did not see any European sentry, in going to, or returning from, the privy, but only the lascar."

Cross-examined by prisoner through court.

Q. by prisoner, (adopted by the court.) "I recollect nothing about *Surgaine* telling me, before or after Malcolm's decease, that you were watching my conduct, and would be glad to have me out of the tent."

Q. by court. "I did not see the prisoner offer any other violence to the deceased. Prisoner did not give any reason for pulling me into

Describes striking.

(29) "The court and prisoner proceed to the tent of the late Malcolm, when the witness points out the position in which M. was lying, when struck by the prisoner. That M.'s head was near the pole of the tent, with his feet towards the N. of E.; the face towards the same direction. By looking in at the E. door, he saw the
(J) blows struck; that the *charcoal* fire was near the centre of the tent, a very little distance from the pole; that the E. door was down, but that he peeped in by the opening of the door to his right, which was not quite closed."

(30) 22nd witness.

my tent. I did not observe, while we were drinking, if *Smith's* trowsers were torn."

Q. by prisoner, (adopted by court.) "I don't recollect what Corporal Willis (31) was doing in our tent; it was in the *forepart* of the evening." Cross-examined.

Q. by court. "Up to 3 o'clock in the morning (as near as I can guess) I can only answer, that Smith did not go to sleep; after that I was drunk. When coming from the tank, I did not observe any clothes, or any thing else, in Smith's hands; (*light put out at 10; and a light brought at 1 in the morning.*") I cannot be answerable for what Smith was doing; it was dark in the tent: he was about the tent, went out of the tent, and came into the tent again. He was out of the tent a *considerable time.* I could not positively say. The only man awake in the tent besides myself was *Robinson,* and I know he was in the tent after the man went out. (*The court cleared, court opened.*) The first grog came between one and two, and Smith brought in the case-bottle between two and three in the morning. While drinking, I did not observe any marks or stains on the prisoner's clothes. I don't recollect having any conversation with *Robinson* after the light was put out, or speaking to him." Court cleared.

Q. by prisoner (adopted by court.) "There might have been some person going out and coming into our tent, besides those who lived in it. Smith's cot stood at the foot of the door near the park (W. door), and there was light enough to see if he was lying on his cot. I know he was not lying on his cot. There was light enough, generally, without the opening of the door occasionally. Smith's and my cot were at opposite corner's of the tent." Cross-examined.

Q. by Court. "I do not recollect what the prisoner said when I accused him of the murder of Malcolm. He was ordered out of the tent (*guard*) by the sentry." *Confirms evidence and retires.* (32)

Gunner John Robinson, 3rd company, &c. called, *sworn,* charge read, and examined by J. A. (*Belongs to the same tent as the prisoner Spencer, &c.* "Spencer awoke me about 10 o'clock on the night of the 23rd December, he told me he believed *Smith* was killing *Malcolm;* he told me to listen to hear how he groaned, and I heard several groans; then Spencer went away from my cot; then Smith immediately came into the tent, and put out the lights, and sat down on his cot: whether he laid down or not, I do not know; he was there for about half an hour; he 11th witness. Prosecution.

(31) 14th witness.

(32) The examination of this witness took nearly three days; and being the principal witness *all* his evidence is given; the questions put, generally omitted.

them got up and began to *grope* about the tent. Spencer spoke and said "konhy" twice, then I spoke and said, "who is there." *Smith* said, "it is me, seeking a drink of water." He then went out of the tent again, he was out about *an hour*, and then came in again to his cot, and slept there for some time; then he got up and went out of the tent again; while he was absent this time, *Spencer* woke up *Hanner*. H. got up, fetched a light into the tent, and then went out again and fetched some grog. Spencer, Hannah, and Stanney (33) began to drink; while drinking, the prisoner came into the tent. H. asked him to come over and drink a dram, he did so. He said, as I have been drinking with you, I will fetch in a case-bottle. He went out of the tent, and brought in a case-bottle of 24 drachms; they began to drink it, they drank till near 5 o'clock; (34) then Smith went away to his cot, and Spencer put out the light, and laid down on his cot; he lay there till he was taken away to the guard drunk." (*Confirms evidence*

Retires. *and retires.*)

Adjourn. The court adjourn at 3 P. M. till Monday at 11 A. M. prisoner remanded to prison.

7th day's proceedings. *Seventh day's proceedings.*

Monday, 11th January, 1830.

The court met at half past 11 A. M. President and members all present, except Lieut. Inglis, sick. Prisoner brought into court, and his irons are struck off.

11th witness recalled. Gunner Robinson, 11th witness recalled, and examined on his former oath by J. A. "When the prisoner came into our tent,

(M) to put out the light, he had on a long *blue coat, and white trowsers,* and a flat cap, glazed. The coat was buttoned. I can't tell how many buttons were buttoned. He had on the same dress while drinking. He put out the light so quick, I could not see any thing he did after that. He (while drinking) laid down some part of the time, and some time sat up. He was absent four or five minutes, when he returned with the case-bottle, which was filled. They drank the greatest part of the liquor. Prisoner went for the liquor between two and three in the morning. I went to sleep a little after gun-fire. Spencer awoke me about 10 P. M. I did not go to sleep, again, after that. Spencer told me he believed *Smith* was killing *Malcolm*. I asked Spencer if we should call the sentry; he did not take any notice, he appeared so very frightened (35). I heard *Smith* moving about in the tent; he got up and began to *grope* about. *Spencer was drunk* when

(33) All of one tent. (34) See Note 22. (35) See Note 23.

they left off drinking. I don't think the prisoner did drink *his share* of liquor in the *case-bottle.* (36) I heard the prisoner open his own box, a little after he put out the light; at this time both Hannah and Stanney were drunk, and sleeping on the same cot (Hannah's).

Cross-examined by prisoner. "The light he put up out was standing on his own box. I could not, when the light was put out, see a man distinctly. Yes, I can swear it was the prisoner who opened the box, because no one else but him came to the cot. Another person could not have come into the tent, without my hearing him. I could not distinguish whether he was lying on his cot. Spencer had not been drinking before 10 o'clock on the night of 23rd December. (37) Spencer did not tell me he saw you strike Malcolm. I saw the prisoner get two pair of trowsers from Hannah, next morning, while drinking. I know of no bargaining. I do not recollect if before or after bringing in the case-bottle." Cross-examined.

Examined by Court. "The prisoner was *groping under my cot.* I don't know what he could be doing there. After seeking for the water, he went out of the tent. I saw the prisoner, who was for guard next morning, about 7 o'clock. He took off the coat he had on. I think, at this time, he had on gray-trowsers. I did not take notice, if he used the *looking-glass* that morning. I did not particularly notice who were present in the tent. Hannah was there, but rather in liquor. On the (I) alarm next morning, he had on the long blue coat, but whether *white* or *gray* trowsers, I can't say. *Spencer* did not suggest any immediate (M) inquiry. I did not ask him why he did not shout out to the sentry. I asked him, if he should call the sentry, but he was so frightened, he made no reply. When the prisoner was drinking, he said very little, but he sat with his face to light. I took particular notice of him. *I observed that he looked different from what I ever saw before.* I did not (H) drink with the party; after what Spencer told me, what I heard, and what I saw, I would not drink with the prisoner. Yes, Spencer appeared to me to be so frightened, when he came to my cot, as not to know what he was about. He told me about the prisoner getting hold of his hand. (38) I don't know if the prisoner took any thing out of his box. He opened it and shut it again. I can't say if the prisoner changed his clothes during the night. I did not notice if his shirt-collar was visible. I did not see that he had any thing in his hand when he came in and put out the light. I did not see him take any weapon out of the tent during the night, or morning. I did not speak to the prisoner, except asking "who was there?" when seeking for

(36) See Note 22. (37) See Note 27. (38) When he pulled him into the tent.

water. When drinking, he was lying down some part of the time on Grange's cot, and some part sitting on Church's box. On the alarm, by bugle, for parade, I went out of the tent and left the prisoner lying on his cot. I did not awake him. I left Hannah awake. I did not observe if the prisoner's trowsers were torn. I heard of Malcolm's murder, between five and six in the morning. I heard no particulars. The groans I heard, continued a minute, or one-half minute. I did not hear them after he put out the light. Perhaps Spencer would have told me more, if the prisoner had not come in so soon. I did not hear Spencer say any-thing to the prisoner about Malcolm's groaning. It might be 4, 5, or 6 minutes after Spencer told me that the prisoner was murdering Malcolm that he came in and put out the light. Can't exactly say, could not be 10 minutes. The light Hannah brought in was burning from half past 1 till near 5 o'clock. I don't know where the prisoner brought the case-bottle from, or to whom it belonged. It remained in the tent for what I know. I did not observe the prisoner shave on the morning of the 24th. The prisoner ran into our tent. I did not observe any attempt to conceal his dress. The prisoner and Spencer have always been on good terms as far as ever I saw."

Cross-examined. *Q. by prisoner (adopted by court.)* "I did not see you and Spencer leave the tent together, that night or morning.".

Q. BY COURT. "I did not like to sleep, I was uneasy of what Spencer told me. I did not look at the prisoner's clothes to see if there were any marks of blood on them." (*Witness says the prisoner wore a similar blue coat and cap to those produced.*)

Court adjourn at 3 P. M. till to-morrow at 11 A. M. Prisoner remanded to prison.

8th day's proceedings. *Eighth day's proceedings.*

Tuesday, 12th January, 1830. The court assembled this day at 11 A. M. President and members all present except Lieutenant Inglis, sick. The prisoner is brought into court, and his irons struck off.

11th witness recalled. Gunner Robinson, 11th witness, recalled and examined by J. A. on 12th witness. his former oath. (39) Drummer Christopher Hannah, 3rd company, called, sworn, charge read, and examined by J. A. (40) *Of the same tent.*

(39) "I am about 20 years of age. I have been two years in the service. I joined with the last draughts." (*Retires.*)

(40) "Got a light from one of the tents of 4th company, and the liquor from Gunner Smith, 3rd company; went to bed drunk between three and four afternoon of 23rd, and did not wake till between 1 and 2 next morning. Prisoner brought a case-bottle of 24 drams. He had a blue frock-coat on; did not observe rest of his dress. Prisoner did not drink so much liquor as Spencer, and I don't know if he

Gunner William Stanney, 3rd company, &c. called, sworn, charge read, and examined by J. A. (41) Of the same tent. 13th witness. Prosecution.

Corporal Alexander Willis, 3rd company, &c. called, *sworn*, charge read, and examined by J. A. (42) 14th witness. Prosecution.

Lieut. G. C. Westmacott, interpreter, 37th N. I. *sworn.* Interpreter sworn.

went out of the tent, except to bring the liquor. *Stanney* went once for liquor in the morning." *Cross-examined by prisoner.* "You were to give eight drams out of the case-bottle for two pair of trowsers." By *court.* "When Spencer awoke me he did not mention any thing about Malcolm's murder. I don't know at what hour the prisoner brought the trowsers in the morning. I did not speak loud. I don't know if Spencer could have heard what was said. I don't know where the prisoner procured the case-bottle from. I did not observe any thing particular in the prisoner's appearance or conduct that morning." *(He was too drunk to do so.)* Withdraws. Cross-examined.

(41) "I fell asleep between 5 and 6 P. M. on 23rd. I did not awake till next morning between 1 and 2. When I awoke, Spencer sent Hannah for a light and some liquor. The prisoner then came into the tent. Spencer, Hannah, and I drank the liquor. More was brought. The prisoner took a dram with us. Hannah gave Smith a pair of trowsers. I took a white pair from H.'s cot and gave them to Smith, who went out of the tent and brought in a case-bottle of liquor of 24 drams; he was absent only five minutes. I found myself a prisoner next morning, in the guard tent, for being drunk. The prisoner, who commanded the guard, came in and said to Spencer, "*Do you know who killed Malcolm?*" S. replied, "*Yes, "you did, you know that yourself.*" *The prisoner seemed quite confused, and turned pale!* The prisoner did go out again, besides the time he went for the case-bottle. I can't say at what hour, or how long absent. I was surprised to see him return so soon with the case-bottle. Can't say if the prisoner drank so much liquor as we did. I observed nothing particular in his appearance while drinking. He had on a *blue coat* and *white trowsers*; his coat was buttoned two or three buttons. I went out, I believe, between 2 and 3 in the morning, to bring liquor myself. I left the prisoner in the tent. I was absent 10 minutes. I got no liquor, I saw prisoner come back to the tent; can't say how long he was absent. I observed no change in his dress or appearance. Can't say if the case-bottle was emptied, I was too drunk." (*Prisoner declines cross-examining.*) *Examined by court.* "I heard Hannah say he would pledge two pairs of trowsers for some liquor. H. gave, I believe, one pair, and I, one pair of H.'s. Can't say what prisoner did with the trowsers. I never heard any of my messmates say, they wished Spencer out of the tent." *Retires.* (M) Retires.

(42) Proves the prisoner's drinking at Gunner Foley's, and at Bombardier Holmes's; that the prisoner left H.'s house with him not later than quarter to 9 P. M., night, 23rd December. The *prisoner* went to the tent of deceased, lifted up the fly of the door, *looked* in, and said he was asleep; *he* then went to his tent. The prisoner wore a *blue* surtout coat and *white* pantaloons. The prisoner sent me from Holmes's house. I went to his own chest. I got a handkerchief, with two rupees in it, and brought it to him." (*Prisoner declines cross-examining.*) (M)

Examined by court. The prisoner and I had no conversation on the road to the tent of deceased. (*Retires*).

15th witness, Prosecution. Kooseeal, Sikleegur, sworn, and examined by J. A. (43).

16th witness. Prosecution. Mugnee, Cook, *sworn*, and examined by J. A. (44).

17th witness. Prosecution. Koollyee, cook, *sworn*, and examined by J. A. (45).

Court adjourn at 3 P. M. till to-morrow at 11 A. M. Prisoner remanded to prison.

Ninth day's proceedings.

9th day's proceedings. Wednesday, 13th January, 1830. The court met at quarter past 11 A. M. President and members all present, except Lieutenant Inglis, sick. Prisoner brought into court, and his irons struck off.

18th witness. Prosecution. Captain Brooke, commanding detachment, 1st battalion Artillery, called, sworn, and examined by J. A. (46.)

19th witness. Prosecution. Benjamin Bell, Assistant Surgeon, Foot Artillery, called, *sworn*, charge read, and examined by J. A.

Medical evidence. "I was a member on the inquest held on the body of the deceased. On the morning of the 24th December last, at about half past 6, previous to the inquest being held, I went with Dr. McGregor and Lieut. Larkins, to the tent of deceased, lifted up the chick of the tent, and found the body lying with its back upon the ground, naked, except the shirt apparently as if it had been dragged from the cot. I observed

(43) "The deceased was rather drunk; I left him on his cot smoking. I left no one in the tent, when I left it at about half-past eight at night of 23rd December! I saw knives and forks on the table. I neither saw nor heard more of him, till I heard of his death next morning. I went to my home in the Sudder Bazar." *Retires.* — Retires.

(44) "Took three forks, two knives, and two spoons into the tent (deceased's,) at half-past six evening of 23rd December." *Retires.* — Retires.

(45) "Gave Mugnee cook the knives and forks, &c. which he got back next morning at 10 A. M. except one fork and one spoon." Identifies them and *retires.* — Retires.

(46) "Received during the 24th December, a bayonet, from the president of the inquest, considerably stained with blood, and marks of recent attempt to clean it, a belt and a pair of trowsers, with stains of blood, as if used to wipe some instrument. Also a regimental undress shako, stained with blood in various places, (M) a blue great coat, stained with blood on the sleeve, a remnant of a *shirt*, then *damp*, with the appearance of imperfect washing off of blood, a *kuleean* (*hooqqu*) (C) bottom, the bottom rim indented, stained with blood, and, with it *clotted* a small portion of *hair*, as belonging to the prisoner; they were placed under lock and key, and a guard; and the key remained in my possession, till delivered to the J. A. at the Court of Inquiry. Part were delivered to me as found with the prisoner's sash, between the flies of the guard tent, near or over, the prisoner's cot. The *cap* was delivered as having been taken from off the prisoner's cot, and as the cap (M) he wore on guard that morning (24th). *Identifies* the cap, and points out stains of blood, inside the peak, round the lower rim, and inside the lining of the shako, and recollects two holes in the lining. The *court* examine the shako in the *sun*, and find there to be stains apparently of blood." (*The cap was made by 23rd witness.*) *Retires.* — Retires.

a great deal of blood on the ground and round the head, the body was cold and stiff."

"There was a good deal of blood on the pillow, also on the tent-pole. There were the remains of fire in an earthen vessel (*gumlah*). A sword of deceased hung on the tent-pole, two old sword-scabbards under the bed. The head was lying further from the bed than the feet, as if it had been dragged by the upper extremities from the bed." (J)

"At the inquest, we found the body lying on its back, with several wounds on the head, with a great deal of blood around the *head*, on the ground. There were several bruises on the part of the *chest* and neck. One bruise extending from the point of the left shoulder towards the collar-bone, and one very severe bruise on the left side of the lower-jaw; part of the skin, about four inches square, was abraided, as if by a burn, the right hand was contracted; the wrist a little bent, and apparently, slightly scorched. Also, *a fracture of the skull* on the right side of the head. Don't recollect if there was any blood on deceased's shirt. I found a bloody handkerchief under the head and shoulder of the deceased; under the corpse." Inquest.

"There were five wounds on the head, four on the right side, and one on the left, over the forehead. The four other wounds were on the right side of the head, above the temporal bone, between the frontal bone and parietal bones. I think it possible a bayonet, or sword, or any other cutting instrument may have inflicted one of the wounds on the right side; the *fracture of the skull* may have been produced by any heavy instrument; the bones of the skull were so far separated, as to admit of the introduction of a finger. I felt the brain. The wound over the left eye was a triangular wound, the base towards the eye; it might have been inflicted by a bayonet or any instrument of that description. The neck, and particularly the upper part of the chest, showed marks of very severe injury having been sustained. The *lower* part of the neck and towards the left ear were much marked with *black and blue marks*. The bruises in the neck might have been done by the *hand*; there were no marks of *fingers*. The bruises towards the upper part of the neck and ear were much slighter. The bruises on the *chest* could not have been done by the hand, but must have been inflicted by some heavy *blunt instrument*, or, perhaps, by the pressure of the *knee*."

Q. "Were there any marks of *strangulation* on the neck?" A. "There were marks on the neck; but not of so severe a nature, as to lead me to suppose the man died from strangulation."

Q. "How low down on the chest did the injury extend?" A. "To betwixt the second and third ribs."

Q. "Did you observe any thing about the *mouth?*" A. "The *tongue* was protruded from the mouth, and firmly fixed between the teeth. It is not *usual*; but in cases of *violent* death, it is sometimes observed."

Q. "In what state was the *blood* about the wounds, and on the ground?" A. "It was congealed: a great deal had been absorbed."

Q. "When you saw the body at half past 6, how long, from the *appearance* of the body and blood, should you conceive the wounds had been previously inflicted?" A. "I should suppose atleast three or *four*, or perhaps five, hours before. Perhaps between three and five hours; it might have been longer; it could scarcely have been *less than three hours*, to be in the rigid state we found it."

Q. Was the nature of the *fracture of the skull*, and the consequent loss of blood such that the deceased might have died, if the other wounds had not been inflicted?" A. "Not by a simple fracture, but in consequence of the injury sustained by the contents of the head, and, also, by the loss of blood, which were in my opinion, sufficient to cause death."

Q. "Were any implements shewn to you at the inquests?" A. "A bayonet and a musket; a belt, a pair of trowers with marks of blood

(C) on them." (*Witness is shewn the hooqqu or kulleean bottom in court.*)

Q. "Would a blow or blows from such an implement or vessel fracture the skull, in the manner you found the deceased's skull?" A. "I think it possible that it would?" (*Witness shewn a tent-pin produced in court.*)

Q. "Would such a tent-pin produce the same kind of fracture?" A. "It would, but not so readily as the hooqqu bottom." (*The witness is shewn a fork produced in court.*)

Q. "Would such a fork have produced any of the other (four) wounds in the head?" A. "I don't think it would have produced any of the four wounds in the head."

Q. "Might or might not the four wounds on the head have been inflicted jointly with the lower rim of the hooqqu bottom and the fork?" "A. The wounds were too large, there were no marks of a fork."

Q. "Might or might not the triangular wound over the left eye have been so inflicted?" A. "The base of the angle of the wound would correspond with the broad part of the fork."

Q. "Supposing a man of the make of the deceased to have been drunk and asleep in bed, do you, or do you not, conceive, that a single man might, by seizing him with his hands and striking him, have rendered the deceased insensible, and, in that state, have inflicted the

wounds, without any noise being made by the deceased?" A. "Yes, I do." (*Prisoner declines cross-examining.*)

Examined by court. Q. "Was the *fracture of the skull,* in your opinion, by falling from the cot, or by a blow from a weapon?" A. "It is impossible it could have been occasioned by falling from the cot; there was a sutrinjee on the floor, and because the edges of the fracture were beaten in, which would not have happened, had it been by a fall." By court.

Q. "Do you consider any of the wounds on the head mortal?" A. "Yes."

Q. "How long might the deceased have lived after receiving the severest of them." A. "I cannot say."

Q. "Was the head or body of the deceased opened?" A. "No."

Q. "Do you conceive this omission to have been at all inimical to a correct opinion being formed by you, of the immediate cause of the death of the deceased?" A. "No. The wounds in the head, and the fracture of the skull, and loss of blood, were, in our (47) opinion, sufficient to account for the death."

Q. "Was it not possible that the deceased (previous to his head and body receiving the wounds you have described) might have died from *intoxication,* or some internal disorder?" A. "He might have died from some internal disorder; but, in my opinion, the wounds were the cause of his death." (*Confirms evidence and retires.*)

Serjeant John McEvey, Bullock Serjeant, called, sworn, and examined by J. A. (48) 20th witness, Prosecution.

(47) Dr. McGregor, the other member of the Inquest, it was not thought necessary to examine.

(48) "The prisoner and deceased drank a wine-glass of brandy at his house. The deceased without water, "as he would not give a pice for liquor with water." They left at half-past six evening of 23rd December, and the deceased took away about half a bottle of brandy. The prisoner was not in the same sprightly humour as he formerly was. When Malcolm had drank his glass, the prisoner shoved over M.'s empty glass, and requested him to drink again. M. said, "You are not going to come over me by making me drink two glasses to your *one.*" (*Witness* (M) *identifies a pair of plaited trowsers found in the prisoner's chest, and described them as torn behind, before he sees them, and as those he wore at his house. The court observe that the legs are torn off below the knees, and that there are some stains as of blood on the hind-part of them.* "They were not torn or marked that evening. I was a particular friend of both. When I heard of Malcolm's death, I went to camp, asked for Smith, and heard he was on guard. *I thought it singular that Smith did not write, or let me know of M.'s death!*"

Cross-examined by prisoner. "The trowsers appear to be the same you wore that evening, but I can't swear to them. I thought you were on friendly terms while drinking." *Retires.* Cross-examined. Retires.

Adjourn. The court adjourn at 3 P. M. till to-morrow at 11 A. M. The prisoner remanded to prison.

Tenth day's proceedings.

Thursday, 14th January, 1830.

The court met at ¼ past 11 A. M. President and members all present, except Lieutenant Inglis, sick. The prisoner brought into court, and his irons struck off.

21st witness. Prosecution. Corporal Thomas Browne, 3rd company, called, *sworn*, and examined by J. A. (49)

22nd witness. Prosecution. Balkissur, lascar sentry, called, *sworn*, and examined by J. A. (50)

23rd witness. Prosecution. Gunner Samuel Singleton, 3rd company, &c. called, sworn, and examined by J. A. (51)

24th witness. Prosecution. Bombardier Edward Day, 4th company, &c. called, *sworn*, and examined by J. A. (52)

25th witness. Prosecution. Gunner, Frederick Lee, 4th company, &c. called, *sworn*, and examined by J. A. (53)

(M) (49) While in the guard tent on the morning of the 24th, the sentry, Gunner Bayle, called my attention to a *blue* surtout-coat lying on the prisoner's cot. I saw marks on the cuff of the coat, but whether blood or not, can't say. I was in the prisoner's tent on the night of 23rd December, between 10 and 11, or 11 and 12. Can't say which: identifies the *blue* coat. I did not observe the man that night." *Retires.*

Retires.

4th witness recalled. 4th witness, Gunner Church, recalled, and examined by J. A. on his former oath. "I was sentry on the morning of the 24th, between 3 and 5 o'clock, in the range between the mess-houses, and the married men's houses. A few minutes before 4, I heard a native sentry *challenge*. I heard the person answer "*friend*," which I am certain was the prisoner's voice. His voice appeared to come from the *tank and privy*, which are both close to each other. The sentry's voice appeared to come from the classies' paul." Identifies the prisoner's *blue* coat and cap. *Retires.*

(M) Retires.

(50) "Was sentry over the treasure tumbril, between 3 and 5 on the morning of the 24th. About 4 o'clock, an European came near my post to ease himself. I saw him go back to his tent, the first tent in the 4th company, about 20 paces off. I *challenged* him, and he answered "*friend*." I don't know who he was. He was dressed in white jacket and white trowsers." *Retires.*

Retires.

(N) (51) "Identifies the *cap* as the one he made for the prisoner seven months ago." *Retires.*

Retires.

(52) "Lives in No. 8 tent, No. 4 company, immediately in rear of the deceased. Heard no noise that night or morning, but a *dog barking*; the dog barked and *howled*, which awoke me." *Retires.*

Retires.

They often do when near any dead person.

(53) "I was sentry from 9 to 11 on night of 23rd, in front of the Park. I heard no noise. My walk did admit of my occasionally being near the tent of the deceased. I observed nothing at or near the tent." *Retires.*

Retires.

Gunga, classie, called, *sworn*, and examined by J. A. (54) 26th witness. Prosecution.

Byrajee, classie, called, *sworn*, and examined by J. A. (55) 27th witness. Prosecution.

Lieutenant G. Larkins, 4th company, 1st battalion, Artillery, called, *sworn*, charge read, examined by J. A. "Next morning, (24th,) on hearing of Malcolm's murder, I ordered a parade at gunfire. I sent for the prisoner as he slept in the next tent to the deceased, and questioned him if he had heard any noise during the night. When he came to me, he appeared *very confused*, and the only answer I could get from him was, that he had not heard any particular noise during the night." *Retires.* 28th witness. Prosecution. Retires.

Serjeant Gregory, first witness recalled, and examined by J. A. on his former oath. 1st witness recalled.

Q. "Did you, or not, observe any particular effect produced on the deceased from drinking? A. "Yes, after drinking he was a very helpless man," (*Identifies some articles.*) Retires. Retires.

Dingoor, washerman, called, sworn, and examined by J. A. (56) 29th witness. Prosecution.

J. A. "I beg to inform the court, that the bayonet alluded to, in the evidence of Captain Brooke, (57) belongs to Gunner Blythe; but that it was satisfactorily proved before the Court of Inquiry, that about ½ past 7, on the evening of the 23rd December, Gunner Hogan, whose hands were bloody from a wound in his head (then bleeding) was the occasion of the bayonet being so stained with blood; in consequence of *Blythe* having then taken down the bayonet, while they were both drunk. Hogan having seized it by the point and socket with his bloody hands." J. A. explains about the bayonet.

J. A. "I here close the prosecution. The prisoner is asked when he will be ready to enter upon his defence. Prosecution closed.

Prisoner. I respectfully request the court that I may be allowed till Monday next, to arrange the evidence for my defence. The court accede to the prisoner's request, and adjourn at 2 P. M. till Monday at 11 A. M. Time to prepare defence.

Eleventh day's proceedings.

Monday, 18th January, 1830. 11th day's proceedings.

(54) "Was in the paul near the tent of the deceased; about eight paces off. I went to sleep about gun-fire, and did not awake till after gun-fire next morning. I heard no noise." *Retires.* Retires.

(55) "I was in the same paul with *Gunga*; we alone. I went to sleep, and heard no noise." *Retires.* Retires.

(56) "Washes for the prisoner. Identifies the pair of white trowsers, which are torn off above the knee, to be the prisoner's property." Retires. (M) Retires.

(57) 18th witness, Note 46.

The court met at ½ past 11 A. M. President and members all present, except Lieutenant Inglis, reported sick. The prisoner brought into court, and his irons struck off.

Defence. 1st witness. Lieutenant Frederick Brind, commanding 3rd company, &c. called, sworn, and examined by prisoner.

The prisoner begs to call upon you for a character.

Character. "I have known the prisoner about 15 months, and I have always considered him a most respectable, and well-conducted man; the records of the Company bear me out in giving him a good character, for the last four years; and previous to that time nothing appears against his character. From what I knew of him, I should have supposed the prisoner the last man to be placed in the situation in which he now stands." *Retires.*

Retires.

2nd witness. Defence. Gunner Matthew Ennis, 3rd company, &c. called, sworn, and examined by prisoner. (58)

3rd witness. Defence. Corporal Thomas Browne, 21st witness, recalled and examined on his former oath, by prisoner. (59)

Written defence. The prisoner gives in a written defence, and requests permission that Mr. Surgeon Ross, 37th N. I. may be allowed to read his defence, the court grant permission accordingly.

DEFENCE. Mr. President and Gentlemen, (60)

Written defence. "Spencer is the only witness, be it remarked, who deposes any thing material against me. Notwithstanding the difficulties I have laboured

(58) "There was a fight between him and prisoner in the sudder bazar on the 22nd December last, there was blood communicated to prisoner's clothes. Some on his breast. He wore a *blue* surtout coat." *Retires.*

Retires.

(59) "Saw the fight on the 22nd December. I cannot say that I saw any blood on your clothes; you and Ennis were entangled together."

"You had on a *blue* surtout coat, white over all, and forage cap.

"The deceased put him under arrest for being absent without leave, in the sudder bazar. He was released from arrest on the evening of 23rd December last. *After the fight was partly over, the prisoner took off his coat. He had no coat on when he and Gunner Ennis were fighting,* (before the prisoner, Ennis, Blythe, Bombardier Grange and myself, were fighting.) *Retires.*

Retires.

(60) Complains of the hardship of not being present at the Court of Inquiry; and that he could not make therefore so satisfactory and clear a defence. And alluding to his confinement in irons, which has made his comrades think him guilty, and hence the positive manner in which they gave their evidence against him. And the difficulty of procuring evidence and information in consequence. Refers to the J. A.'s practice of courts-martial, p. 25, No. 7. The effect of which was to keep him in ignorance, except as to the charge. Could have compared the evidence before the Court of Inquiry, and the court-martial, &c. &c.

under, I will be able, I trust, to satisfy the court that his evidence ought to be listened to with great suspicion."

"*Gentlemen*, I will assume once for all that the *blood* which has been observed on my *looking glass* and different articles of clothing was originally spilt in the *fray* of the 22nd December, and now I will mere- (I)
ly point out to you that *Church* (61) himself states, that he did not
see the looking glass from the 22nd, till the 24th. when he observed
the stains, and in absence of all evidence to the contrary, I am entitled
to your belief that the stains on that glass had remained from the
evening of the 22nd. I may here mention, as an instance of the posi-
tive manner in which the witnesses for the prosecution have spoken,
that this same *Church* swears that he heard a native sentry challenge
on the night or morning of the 23rd-24th; that a person answered
"*friend*," and that he is certain, from the sound of the voice, that I
was the person so challenged; whereas, it was clearly proved by the
evidence of the *native sentry himself*, that the man whom he challeng-
ed did not belong to the same tent, or even to the same company
with me." (62)

"I will now offer such observations on the evidence of *Spencer*, (63) as will, I humbly trust, so shake your faith in his testimony, as to com-
pel you to dismiss me from this bar, not only with my life, but with
my character."

"*Gentlemen*, the question before you is one of *identity*, and if I can establish that I *might* have been mistaken for another person, on ac- Identity.
count of the darkness of the night, and other circumstances, surely
you will not from other, and that mere *presumptive*, evidence condemn
me to suffer an ignominious death. I will not offer such an insult to
your understandings, as to suppose you ignorant of the very fallacious
nature of presumptive evidence. Were it not for the time this trial
has lasted, I could recount, from authentic records, numerous cases
where unfortunate persons have been convicted on presumptive evi-
dence, when after-circumstances have clearly proved the fallacy of the
facts upon which their conviction had been founded; (64) but to return

(61) 4th witness. (62) 22nd witness. (63) 10th witness.

(64) *Case* 1.—*Mr. Hayes*, a man of property, was robbed at an inn at *Oxford*.
The evidence against Bradford, the landlord, was that of two gentlemen, who had
supped with *Mr. H.* and retired at the same time to their respective rooms. They
were alarmed in the night, with a noise in *his* room, and soon hearing groans, as
of a wounded man, they got up in order to discover the cause, and found their
landlord (Bradford) with a dark lantern, and a knife in his hand, in a state of as-
tonishment and horror, over his dying guest, who almost instantly expired. On
this evidence, he was executed. B. had determined to murder Mr. H., knowing

to *Spencer*—he himself acknowledges that he was so much frightened by what he heard and saw, as to be perfectly incapable of exercising a sound judgment on any subject whatever, and this is well exempli-

him to have property about him. For this purpose, he proceeded, with a dark lantern and a carving knife, intending to cut the throat of his guest, while yet sleeping; but to his astonishment and confusion, he found him already murdered, and weltering in his blood. The servant had also contemplated to murder his master Mr. H. and had just committed the bloody deed, and secured the treasure, a moment before the landlord entered for the same purpose. This the servant confessed several years afterwards, on his death-bed. (*Newgate Calendar*, vol. ii. p. 92, A. D. 1742.)

Case 2.—Richard Coleman. (*Identity.*) *Sarah Green*, who had been to a bean-feast, in *Kennington Lane*, staid late. On her return towards Southwark, she met three men, who had the appearance of brewer's servants, who used her in a brutal manner. She was sent to St. Thomas's Hospital. While there, she declared that the clerk in Taylor's (then Berry's) brew-house, was one of them. Two days after, *Coleman* and *Daniel Trotman* called at the Queen's Head ale-house; the latter was sober, the former (C.) drunk.

A man asked him (C.) if he knew *Kennington Lane.* C. said, "Yes, *d— ye, what of that?*" The man asked C. if he knew the woman who had been so cruelly used; C. said, "*Yes, and again d— ye, what of that?*" The man asked, was not you one of the party concerned in that affair. C. who was drunk, and had no suspicion of design, replied, "*If I had, you dog, what then?*" and threw a spoon at him. A violent quarrel ensued; but C. went away. More than a month after, *Trotman* and another man went before Mr. Clarke, magistrate, and charged *Coleman*, on suspicion. The magistrate hired a man to take Coleman to the hospital where *Sarah Green* was, and a person, pointing out *Coleman*, asked, if *he* was one of the persons. She said, she believed he was; but as she would not swear positively, he was admitted to bail. Sometime after, C. was taken before the magistrate, who would have discharged C. but Mr. Wynne, Green's master, requesting C. to be once more taken to see her, a time was fixed, and the justice took C.'s word for his appearance. He (C.) came punctually to his time, bringing with him the landlord of the *ale-house* where *Sarah G.* had drunk on the night of the affair *(feast)* with the three men who really injured her, and the publican and other people declared on oath, that C. was not one of the party. Next day, the justice went to the hospital to take the examination of *Green* on oath. She said she could not tell if C. was one of the men who had injured her, as it was dark at the time; C. being called in, she swore C. was one of the three men. The justice thought *Green* was not in her right senses, allowed C. to go, and took his word to appear at the next assizes for Surrey; and he brought his bail, and gave security. *Sarah Green* died in hospital; the coroner's jury found a verdict of wilful murder against C. and two persons then unknown. C. through alarm absconded (though conscious of his innocence), and secreted himself. A reward was offered by proclamation, which C. read; he printed in the news-papers, an advertisement, *(I, Richard Coleman, &c.)* declaring his innocence, and willingness to appear at the next assizes. He was tried and his conviction arose principally from the evidence of *Trotman*, and *Green's* declaration. Some persons swore C. was in another place at the time, but were not believed. He was executed, but delivered in a written declaration of his innocence. *Newgate Calendar*, vol. ii. 278. It turned out that the three men were *Nichols*, *Jones*,

fied by the fact, that he took no steps to alarm the sentries, walking within a few paces of him, by which means he might, very possibly, have prevented the consummation of the horrible crime for which I am arraigned. May I not fairly assume, that any person dressed in the same way that Spencer well knew me to be in the habit of dressing, might, to his disordered fancy, actually appear to be me!—and to the fact that others in camp were in the habit of dressing in a similar manner."

"We have the testimony of Spencer himself in answer to a question put to him by me. I may here remark, that the *night of the 23rd December, was a dark one*, and, notwithstanding this, the witness makes no difficulty in speaking, with his usual confidence, to my person, though according to his own account, at a considerable distance from him. In fact, the *probability* of a mistake as to *identity* on such a night must be so obvious to you, that I will not occupy more of your time on the subject than merely to make a few observations on *Spencer's* evidence, of the most important fact to which he deposes. I allude to that part (Q) of his evidence in which he says he saw me strike Malcolm. He acknowledges that the striker's back was towards him, and, when asked how, in that case, he knew it to be me, he answers because I had just left my own tent, and because he followed me so closely, that he could not be mistaken: thus clearly inferring what he had no certainty of being the fact; for, on being further questioned, he allowed that I did not go direct to Malcolm's tent, but passed on some distance beyond it; besides this, when asked how he could see so well what took place in the tent, he answers because there was a clear *charcoal fire* burning, (J) which lit up the whole interior of the tent; whereas, luckily for me, a former witness, *Gregory*, (65) who assisted in putting Malcolm to bed at gun-fire, two hours previous to the time sworn to by Spencer, distinctly

and *Welsh*, who (W.) told it to *Bush*, and that Coleman was innocent, and that he (W.) N. and J. were the three men. *Bush* being ill, told his father what *Welsh* had told him, and seeing *Jones*, at the same public house, they called him in, and told him what they had heard; *Jones* trembled and turned pale, but said "*we were connected with a woman, but who can tell that was the woman Coleman died for?* All three were apprehended, and denied their guilt. The hearsay testimony of *Bush* being all that could be adduced. *Nichols* was admitted King's evidence. The three men at the time the assault took place wore *white aprons*, (as brewer's men do,) and Jones and Welsh called *Nichols* by the name of *Coleman*. After conviction, they confessed their offences, and signed a declaration, which they begged might be published, containing the fullest assertion of C.'s innocence." (*Newgate Calendar*, vol. ii. 435.)

See also the end of murder—after *confession*.

(65) 1st witness.

states, that only the *remains* of a *charcoal fire* was then left in the tent; and surely, *gentlemen*, I have a right to assume, that no *addition* was made to this fire after the inmate of the tent was placed in bed helplessly drunk, except indeed, we suppose, that the murderer of Malcolm, to make his bloody proceedings as conspicuous as possible, had first heaped an additional fuel to the already expiring fire, previous to his commencing the work of destruction. (66) In connexion with this subject I may here mention, that Spencer, in another part of his evidence, stated, that, after the light was put out in his own tent, he could clearly see, whether I was lying on my cot or not, and in fact that he could clearly distinguish my person and proceedings. Another witness, *Robinson*, (67) likewise an inmate in the same tent, admits that the tent was so dark that he could distinguish nothing that occurred in the tent during the absence of the light. Considerable stress has
(C) been laid on the circumstance of my *hooqqu* bottom having been found in Malcolm's tent, under such circumstances as already to show that it had been used for the purpose of striking the deceased. I do not deny having left my *hooqqu* in Malcolm's tent, but surely that circumstance can by no possibility prove any thing against me. No doubt, the murderer, on proceeding to commit the crime, made use of whatever came most easily to his hand, and what so convenient as the *hooqqu* bottom, so unfortunately left by me in the tent. (68) In short, if any weight is to be placed in the fortuitous circumstance of my *hooqqu* bottom being found in Malcolm's tent, which of you, *gentlemen*, would be safe, should any of your *servants*, in murdering one of his fellows, leave his *master's* sword in the body of his miserable victim. (69) I might go on enumerating many other circumstances tending to impugn the accuracy of the evidences for the prosecution; but, *gentlemen*, I am satisfied that, from the great attention you have bestowed on the proceedings of this trial, I may safely leave my fate in your hands, without taking up more of your time than may be required for you *to listen to my solemn declaration that I am innocent of the crime imputed to me.*

Kurnal, 18*th Jan*. 1830. "B. Smith, Serjeant.

Adjourn for reply.

J. A. asks the court to adjourn till Wednesday, to enable him to prepare his reply to the prisoner's defence.

The court adjourn at 1 P. M. to Wednesday, at 12 o'clock A. M.

(66) The only wonder is, that the prisoner did not put it out altogether.

(67) 11th Witness.

(68) It is clear the prisoner was so drunk or confused that when he asked *Spencer* for his hooqqu, he forgot to take away the instrument of destruction.

(69) See Note 64.

12th day's proceedings. 12th day's proceedings.

Wednesday, 20th January, 1830.

The court met at 12 A. M. President and members all present, except Lieut. Inglis, sick. The prisoner brought into court, and his irons struck off.

The J. A. reads his reply. Reply.

"Lieut.-Col. Whish, and gentlemen, members of the general court-martial, I feel it to be my duty to reply to the prisoner's defence, though there has not been any evidence adduced to disprove that for the prosecution, and although the prisoner has confined himself to the examination of witnesses, to show, that the blood found upon his clothes was the result of a fight in the sudder bazar on the 22nd Dec. last, the day before the murder is stated to have been committed, but no evidence had been offered. As the prisoner commences his defence by complaining of the harshness of the treatment he has experienced, it is incumbent on me to show, that nothing of the kind has been suffered by him, beyond what is usual in similar cases, and is required for the security of the person of a man, who has been charged with the crime of murder."

"On the morning of the 24th December, when it was known that Malcolm had been murdered, there arose circumstances to induce the confinement of four persons, and the usual inquest was held on the body of the deceased. Subsequently, Spencer accused the prisoner to his face, while he (the prisoner) was in command of the quarter-guard, in which Spencer was confined, for being absent from parade that morning; so that the prisoner knew by whom he was accused, and the nature of the accusation."

"Lieut. Brind, commanding the prisoner's company, upon an investigation of the circumstances, ordered the prisoner to be confined, and put in irons.

"A special Court of Inquiry was ordered, and I was directed to conduct the proceedings. The Brigadier General ordered the court to investigate 'such matter as that officer will submit to it;' and, here, I must observe, that as the prisoner had said, before he was accused, that there must have been more than *one*, or more than one or two concerned in the murder, (70) and that it was sure to be found out, coupled with the confinement of four other men on suspicion, the court were setting to inquire into *all* the circumstances connected with *all* the persons in confinement. In the course of the inquiry, it became clear, that there was no evidence against any one but the prisoner, and

(70) Though not in evidence, it was known to the J. A.

the other four men were released. (71) With respect to the evi-

(71) The prisoner says, that at p. 25 of the work alluded to (see Note 69) states that the practice of the army "usually requires the attendance of the accused;" but at page 711, Note 149, alluding to persons accused of *capital* crimes, I there state, that "the prisoner being present before a Court of Inquiry, and knowing the facts of his own case, and seeing the extent of proof likely to be brought against him, may lead to subornation of perjury, or to induce a material difference in the evidence that may be given on trial;" and, I will here add, such a course may be the means of defeating the ends of justice. If a Court of Inquiry in such cases is not to act as a grand jury does, justice must be administered, so as to give a prisoner an advantage at the expense of leaving the interests of society unprotected. Had the prisoner been tried before the Supreme Court at Calcutta, he would not have been present before the grand jury. *Blackstone*, vol. iv. 302, lays it down, that the grand jury *"are only to hear evidence on behalf of the prosecution: for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined."*

Nor is a prisoner or his counsel allowed to see the *depositions* taken before a grand jury, and why? because the law denies him a knowledge of the evidence for the crown, whether heard *viva voce*, or whether it be in *writing*. Now, it is quite clear, that as witnesses for the prisoner are not examined, it is the manifest object of the law, *that the prisoner should not possess a knowledge of the evidence for and against himself, while the King, who is to prosecute, cannot know more than the extent of evidence against the prisoner*, or what means he may take to defeat such evidence. *It would be unjust to call upon a prisoner to produce his witnesses* before a Court of Inquiry; and such court can no more than a grand jury decide on the merits of the case without hearing the witnesses on both sides."

"It is usual, in this country, to have the accused, in ordinary cases, present before a Court of Inquiry; where, he can, by explanation or the production of witnesses, prove that there are no grounds for his trial; *but in all cases of a charge of a capital nature, or such as the prisoner can only be freed from by a solemn trial, by the examination of witnesses on oath, it is quite plain, that no prisoner, when actually accused of having committed murder, could be set at liberty without standing his trial; and that his mere presence before a Court of Inquiry must be perfectly useless, as he cannot, by denial of the accusation, free himself from it; but only by evidence to disprove the charge alleged against him.*"

"I must also remark, in further support of the *necessity* of a Court of Inquiry acting in *such* cases in the manner of a grand jury, that, at the assizes in *England*, where the judges meet for a general gaol delivery, (or before the Supreme Courts in India,) the first step is the forming a grand jury, by whom bills and indictments are brought into court, and that, if *true bills* are found, a trial commences *immediately*. Whereas the proceedings of Courts of Inquiry are frequently sent to Calcutta from places distant from the head-quarters of the Commander-in-chief, before a trial is ordered; and had it been done in the present case, a month must have elapsed before a trial could have taken place; and it is obvious, that the interests of justice might have been affected, had the prisoner heard the evidence given before the Court of Inquiry."

"There is no rule laid down by *authority* for the conduct of Courts of Inquiry, nor do the writers on military law *direct the attendance of the accused*; but, it is an understood rule that, where the M. A. and Articles of War are silent, recourse

dence against the prisoner, he has told you, that *Spencer* (72) is the only *one* who deposes any thing material against him; this of course alludes to the witness having seen him *strike* the deceased. I shall not trouble the court with many observations upon the subject of a *single* witness swearing to the act of striking, because the testimony of Spencer is *supported* by that of *Robinson*, as far as the latter could do so; that is, while awake, and he could observe the motions of the prisoner, as to going out of, and returning to his tent, at *several* times, and his absence from the tent, at one time, for nearly, or the best part of, an hour. Then as to the fact of the prisoner *drinking* with Hannah, Stanny, and Spencer, we have these three witnesses (73) to it. Hannah asked the prisoner to drink. It may appear singular that *Spencer* should have sat down to drink with a man by whom he had seen such an act committed; but, we have only to explain it by the evidence of their being engaged in drinking *before* the prisoner came in; and if we can believe that *fear*, of consequences to himself, prevented Spencer from doing more than mention what he had to *Robinson*, (Hannah and Stanny then lying drunk and asleep on H.'s cot,) it is to be supposed that even when drinking with H. and S. before the prisoner came in, Spencer through the *same fear* (stimulated by the *caution* given him by Robinson) would not speak, of what he had seen, to *them*; nor could he well have refused drinking when the prisoner was present, and invited by H. without, at the same time, disclosing what he had seen. (Q)

must be had to the *common law of the land*; and by *that law*, a prisoner is not allowed to be present before the grand jury, (*Blackstone*, 4, 318;) because it is incompatible with the due administration of justice. It has been so established *for wise reasons*, and by following the rule of the law of the land, we cannot be wrong. *Blackstone* 4, 125, says, "*anciently it was held, that if one of the grand jury disclosed to any person indicted, the evidence that appeared against him, he was thereby made accessory to the offence, if felony: and in treason, a principal. And at this day, it is agreed, that he is guilty of a high misdemeanor, and liable to be fined and imprisoned.*" Their oath is, "*the King's counsel, your fellows, and your own, you shall keep* secret." So that, the object is *secresy*, with regard to the proceedings before a *grand jury*; and *so* should there be in *Courts of Inquiry*, in similar cases, that the ends of justice be not defeated, nor that any *prejudice* be created against the accused, by the knowledge of the evidence against him before his trial."

"In the present case, General Adams, commanding the division, was of opinion, that an *immediate* trial, while the facts were *fresh* in the recollection of the witnesses, would best answer the ends of justice; and, for that reason, the trial was ordered as early as possible: I must add, that the prisoner desired an *early* trial himself. The prisoner asked for three days to prepare his defence: the court granted the indulgence. I am sure would have granted a longer period, had it been asked for; and, as the trial began on the 4th of this month, every reasonable indulgence has, in fact, been allowed."

(72) 10th witness.——(73) Witnesses 10th, 12th and 13th.

Robinson tells you *he* would not drink with the prisoner after what he had heard; but as he had not been drinking *before*, he could readily excuse himself."

"Spencer tells you that, at a little before 10 o'clock on the night of the 23rd December, on first going out of his tent, he heard *groans* in Malcolm's tent; he then goes to the privy, and on his return, listens and hears the same noise; that the prisoner, who was near the tank, overtook him, caught hold of his arm, asked him what he was stopping there for, (that is near Malcolm's tent,) pulled him into his own tent, and took him up to the light against his own (prisoner's) box. Spencer says, 'I looked at him and asked him what made Malcolm groan so, he said two or three of them had been drinking together, and that the b— was drunk.' I confess the words '*two or three of them*' made me, at first, think more than *one were* concerned in the murder; my reason for a contrary opinion will be explained best by the evidence of Dr. Bell (74) and Serjeant Gregory's. (75) As to Malcolm (who, we have evidence, was drunk on the night of the 23rd December, and was assisted out of the trench, near his tent, by Serjeant Ditchfield. (76) When drunk, being a helpless person."

(C) "Spencer tells you, after the prisoner's inquiries about his *hooqqu*, and saying he had left it in Malcolm's tent, he (prisoner) directly went out of his own tent, and I followed him. I saw the prisoner opposite the little paul near Malcolm's tent. I saw the prisoner go into Malcolm's tent; I ran up to the door of Malcolm's tent, and peeped in. I saw the prisoner strike Malcolm twice; I do not know with what he struck him. I ran into my own tent, and awakened up *Robinson*, and said, 'for Christ's sake, wake, for I think Smith is murdering Malcolm.'" (*Robinson confirms this.*) (77) "I asked him to listen how he was groaning. (*Robinson* says, he heard *groans.*) Robinson said, 'go and lie down, on your cot.' I had just left Robinson's cot, when Smith came in and put out the light in our tent. (Robinson confirms this.) Serjeant Ditchfield tells you, (78) that 15 or 20 minutes before nine on the above night, he left Malcolm in his tent; he left Koosseal there; and we have no evidence of any other person being in the tent that night afterwards. The *groans* are heard at a little before 10, in Malcolm's tent, and the prisoner is seen by Spencer going into that tent. The prisoner has not shown that he was any where else: had he been in his own tent at this time (the light not being then put out), Robinson, then being awake, could have spoken to the fact; had he been in any other tent, those in it might have been able to say so, but the not being able

(74) 19th witness. (75) 1st witness. (76) 8th witness.
(77) 11th witness. (78) 8th witness.

to say and prove where he was, and being found out of his tent, at this moment, is suspicious alone; nor, does the prisoner assign any reason for leaving his tent."

"As to the night being *dark*, (as the moon did not rise till about half past four on the morning of the 24th December, and the moon was close at the last quarter,) and the prisoner thinking that Spencer could not have seen the act committed, I have to observe, that he knew him near the tank, by his *voice*, as well as *dress*, and by his following him so closely: and, when he had seen the prisoner's person by the *light* of the *lamp* in his own tent, and saw him *leave* the tent, and *followed* him, he could not mistake his person; he says, '*did not lose sight of him.*' The night was of course dark, as there was no moon; but we have in evidence a *charcoal fire* in Malcolm's tent, and not then out, but alight; and the question is, if the blows were given at the time alleged, would such a fire have continued to burn without being fed with fresh fuel for an hour, and, if so, would such a fire (as Spencer states) throw sufficient light over the interior of the tent to admit of Spencer's seeing the prisoner strike Malcolm." (79) (M) (J)

"It is to be observed, that in proportion to the *external darkness* being *great*, would be the *increase* of *light*, arising from a *fire in* the middle of a *small* tent; as we know well, that a *candle* gives no light in the *day time*, but a strong light at *night*; and proportionably so, as the external light is excluded from the place in which it is put." (R)

"Besides Spencer heard *blows* given; he says, 'they made a noise as if any one was struck with a stick: this brings me to speak about the *hooqqu bottom*, which was found in Malcolm's tent *indented*, and stained with *blood*; and, Captain Brook (80) states, when he first saw it, "with it (the blood) clotted a small portion of hair." This *hooqqu bottom*, proved to be the prisoner's, was found in Malcolm's tent in the condition described; and it is proved, that while the orderlies of companies were in M.'s tent, about 8 o'clock on the same night, it was not in the same state, but *free from those marks*. We have also in evidence that *such an implement* is *capable* of inflicting a *mortal* wound by fracturing the skull. (81) That the skull of the deceased *was fractured*, and that that fracture and the loss of blood occasioned his death." (Q) (C)

"Besides the other facts stated in evidence, we have the prisoner's *clothes*. We have a *blue* frock coat, proved to be *his*, stained with *blood*, and Corporal Browne (82) tells you, when examined on the de- (M)

(79) There was *hearing* to assist the *vision*.

(80) 18th witness.

(81) 19th witness.

(82) 21st witness. See 3rd witness for defence.

fence, that when the prisoner was fighting in the sudder bazar with Ennis, (83) he *took off his coat;* and the question is, whether, though Ennis was covered with blood, any of the blood found on the prisoner's coat is to be ascribed to the *fight* on the 22*nd, or to the act committed on the* 23*rd December.*"

"Spencer tells you that the prisoner on the night of the 23rd December had on a *blue* great coat and white trowsers. Corporal Browne describes the same kind of dress on the 22nd December in the fight, and that he (the prisoner) and Ennis (who was covered with blood) were entangled together; he does not know if there was blood on the prisoner's clothes. Ennis says there was some on the prisoner's breast, (observe Corporal B. says his coat was off:) this must have been on his *waistcoat or shirt,* or on both. It will be recollected, that Bombardier Barker (84) observed some spots of blood on the prisoner's shirt on the morning of the 24th December, and advised him to change it, (which the prisoner did,) saying to him, '*Serjeant Smith, on such a day as this, this looks very suspicious,*' and observed that when he (Barker) spoke about the *murder* to the prisoner, he '*hung down his head!*'"

(H) (M) "We have, again, another shirt, or rather, the upper part of a shirt, found by Serjeant Sheridan, (85) under the prisoner's bed, in the guard tent, as the witness states, 'stained apparently with *blood,* and then *wet:* I could have wrung water out of it. It was rolled up.' We have not proved it to be the *prisoner's;* but, if not, how came it there? A question might arise, if it be *his,* and the shirt he wore on the 22*nd December,* would it, if *washed,* (but *when* we have no proof) have remained in its wet state so long; and why was it found *torn? No shirt was torn on the* 22*nd December in the fight!*"

"There is an undress *shako* of the prisoner's found with *blood* about it. *Singleton,* (86) who made it, swears to its being the prisoner's. Corporal Browne says the prisoner wore a *forage cap* on the 22nd December, so that the blood on the *shako* cannot be ascribed to the *fight* on the 22nd!"

"But, the most remarkable fact as to *dress,* is a pair of *white trowsers,* which *Dingoor,* (87) the washerman, swears to be the prisoner's. *Serjeant McEvoy* (88) identifies them as the same worn by the prisoner, about sun-set, on the evening of the 23rd December: they were found in the prisoner's chest next day, with the legs of the trowsers torn off below the knees, and stains of blood on the hind part of them;

(83) 2nd witness. Defence. (84) 7th witness. (85) 6th witness.
(86) 23rd witness. (87) 29th witness. (88) 20th witness.

and nothing is offered to show, or explain, how they became so torn; *as we have no tearing of clothes on the* 22nd December, or previous to that day."

" With respect to the *malice aforethought*, as described in the charge, *Blackstone*, vol. iv. 198, observes, 'This is the grand criterion which now distinguishes *murder* from *other killing*; and this *malice prepense* is not so properly *spite* or *malevolence* to the deceased in particular as any evil design in general; the dictate of a wicked, depraved, and malignant heart, and it may be either *express*, or *implied*, in law. *Express* malice is when one, with a sedate, deliberate mind, and formed design, doth kill another: which formed design is evidenced by *external* circumstances discovering that *inward* intention. Also, if upon a sudden provocation, one beats another in a cruel and unusual manner, so that he dies; though he did not intend his death, yet he is guilty of murder by *express* malice; that is, by an express evil design, the genuine sense of malice. Also, in many cases, where no malice is expressed, the law will *imply it*, for all homicide is presumed to be malicious, until the contrary appeareth upon evidence.' " Malice aforethought.

" Lastly, as to the *instrument*, Blackstones states, p. 196, 'If a wound be alleged to be given with a *sword*, and it proves to have arisen from a *staff*, an *axe*, or a *hatchet*, this difference is immaterial.' " Instrument

" We have seen no proof of the existence of any *quarrel* between the prisoner and the deceased; but, in this case, if you believe that the prisoner struck the blows as described by Spencer; having found those facts, the law implies malice, not only from the act of striking, but from the *nature* of the *implement* or *instrument* used being such as is *calculated* to cause *death*, and the law therefore implies *malice aforethought*; but *when* malice may have arisen in a man's mind, it is impossible, in the absence of proof of the existence of any *cause* for it, to say. We cannot read a man's *secret* thoughts, or know what may be passing in his mind. We can only judge of *facts* as they occur, and attach a *character* to them from the *circumstances* and *manner* connected with them; and upon *circumstantial* evidence. Mr. Starkie, on Evidence in *Criminal* Cases, observes, vol. ii. p. 960, 'Circumstantial evidence in this *(murder)*, as in all *other* criminal cases, relates principally"— (O) Circumstantial evidence.

" 1st. 'As to *motive*.' Motive.

" 2nd. 'The *means* and opportunity which he possessed for perpetrating of the offence.' Means.

" 3rd. " The *manner*. His *conduct* in *afterwards* using means and precautions to avoid suspicion and inquiry. Manner.

" 4th. *Circumstances* which are *peculiar* to the *nature* of the crime: Circumstances.

such as the *possession* of an instrument of violence, corresponding with that which *has* been used to perpetrate the crime, *stains of blood* upon the *dress*, or other indications of violence."

(O) "If we have no proof of any *quarrel* between the *prisoner and deceased*, neither have we, of any between the *prisoner and the witness Spencer*."

"It is my painful duty to say, that the court must be aware, that, from the nature of such cases, it is frequently impossible to produce more than a *single witness*, and for this reason, and because such crimes might, *otherwise*, go unpunished; as no man admits others into his confidence on *such occasions*, the *law* requires not more than *one credible witness*."

"*Spencer*, it will be recollected, was *drunk* on the morning of the 24th December, but when *sober, and he awoke*, he told what he had seen; (89) before this, he assigns as his reason for not doing so, that he was alarmed, and Robinson (90) tells you, he was afraid to speak upon the subject till Spencer, who was in confinement, did. It is to be lamented, that Spencer did not induce Robinson to accompany him in going to the assistance of Malcolm. They were both evidently alarmed, as they neither went to sleep afterwards, and Spencer sent out for a light, and induced Hannah and Stanney to drink with him to keep him company. But, there is nothing in all this, to affect their *credit* as witnesses, if you believe that *fear* will operate on the minds of two men who are *young*, (91) and but *recruits*."

"With regard to the evidence given by Spencer, the court will recollect the various ways in which he was questioned by myself, the prisoner, and the court, and that to a very great length, (92) without, in the slightest degree, occasioning any variance in his testimony. The same remark applies to Robinson."

"The evidence of *Hannah* and *Stanney* only applies to the period when the prisoner was drinking with them; they confirm the evidence
(M) of *Spencer* and *Robinson* as to the prisoner's *dress*, and as to his leaving the *tent*, though they cannot speak as to the length of *time* he was *absent*; but they were *drunk*, and a man may not recollect, very clearly, what took place while he was *in such a state*, but he would recollect what took place *before* he was drunk, and this will apply to *Spencer* who became so: or he might, otherwise, have sooner made the accusation against the prisoner."

(89) Delay, under other circumstances, would have lessened his credit.

(90) 11th witness.

(91) Spencer, 24, and Robinson, 20, years of age.

(92) Took up nearly three days: 3rd, 5th, and 6th days.

"A remark has been made as to the *impossibility* of Spencer knowing the *motions* of the prisoner, after the light was put out. Spencer knew that, besides himself, only the prisoner and Robinson were awake. *Some* person was moving about the tent. Spencer tells you, he said, "*Kouhy,*"—Robinson asked, "*who is there.*" When Smith (prisoner) replied, he was seeking for a drink of water. It is presumable they both knew the prisoner's voice, as they all belonged to the *same tent,* and Robinson has told you that he heard the prisoner *open his box.* There was no occasion for any *light.* *No one* was stirring, besides the *prisoner,* in the tent. After this, Robinson tells you, the prisoner left the tent, and was absent about an hour. While out *this time,* he came in again, and went out a *second* time; and then it was Spencer awoke Hannah, to go for the light."

"What the prisoner did on these occasions of absence from his tent, we have no evidence, except on the occasion of bringing in the *case-bottle,* when he was about four or five minutes."

"It may be said, the *striking* seen by Spencer by the infliction of *two blows* does not account for the FIVE wounds in the *head;* (93) these no doubt were inflicted *after* (94) *the fracturing of the skull,* by the person by whom the murder was committed. The question is, if, as Dr. Bell says, the fracture of the skull could have been occasioned by the implement which bears the marks of blood, without occasioning any *noise,* in the state in which the deceased is proved to have been; it may be inferred, that the concluding scene of the murder was accomplished *after the witness* (Spencer) had seen him struck by the prisoner."

"The *medical evidence* proves marks of violence upon the *chest* of the deceased, and also under the *jaw;* the latter of a nature to induce a belief that *strangulation* had been had recourse to, at the time the first blow was struck. I mention this to show, that it is possible that those in the *opposite tent,* and even in the *prisoner's tent,* might, though awake, not have heard any thing particular to excite alarm." Medical evidence.

"Church, (95) heard the prisoner challenged at 4 o'clock on the morning of the 24th December. Bombardier Day, (96) in the opposite tent of the 4th company, heard nothing but a *dog* barking or howling." (97)

(93) 19th witness.

(94) It was thought a fork had been used; there were *hairs* on it, seen by the aid of a magnifying glass, which could not have been produced by eating meat.

(95) 4th witness.

(96) 24th witness.

(97) See Note 52.

"The court examined the ***native sentry***, (98) near the treasure tumbril, and I inquired of ***all the sentries, European and Native***, and could gain no information. The non-commissioned officer, going the *rounds*, were also examined, without gaining any."

"I am glad that, on the present occasion, the prisoner has had the able assistance of Mr. Surgeon Ross. It is desirable that prisoners should have such assistance, and it is highly creditable to the feelings of humanity, that a prisoner, so situated, has not been left without aid and assistance in putting questions, and preparing his defence." (99)

Gentlemen, the questions for your consideration are:

1st. Was the late Staff Serjeant Malcolm ***murdered?***

2nd. Was the act, or was it not, committed by the prisoner; and in estimating this last question, is involved the *credit*, or otherwise, which you attach to the evidence adduced; coupled with evidence of a *circumstantial* nature, which are inferences of law, to support such testimony. No prisoner can have a fairer trial than by that before a general court-martial, in such cases. As the prisoner will have the benefit of the opinion of the J. A. G. and the Commander-in-chief; and such proceedings are subject to the ***confirmation*** by the Governor General in Council, (100) aided by the opinion of the Advocate General, and even by that of the Judges of the Supreme Court, if there be any ***doubt*** of a ***legal nature***, rendering that measure necessary." (101)

"In the conscientious discharge of my duty, I thought it proper not to allow the prisoner to be present before the Court of Inquiry, and I should regret if I were wrong in doing so, or had been the means of any harsh treatment towards the prisoner. I hope the point will be settled by the Right Honourable the Commander-in-chief, that an incorrect procedure may be avoided: while, on the other hand, no ***custom***, contrary to the practice of the ***law*** in such cases, can prevail, so that *its* rejection should render these proceedings illegal. The proceedings of a Court of Inquiry are for the information of those in authority, to enable them to judge of the propriety of bringing persons to trial; and for no other purpose." (102)

(98) 22nd witness.

(99) I was asked, but I pointed out the uselessness of my writing any defence, which I must, the next time the court met, have cancelled by my reply. The defence properly went to the question of ***identity***.

(100) Section 4, M. A.; 4, Geo. iv. c. 81.

(101) I have known cases in which members, ***doubting*** as to a point of consequence, were quite satisfied that any error they might commit would be thus corrected in the proper quarter.

(102) See Note 71.

"I have to apologize for the length of this reply, which I have felt it my duty to offer."

"*Gentlemen*, I solicit you to hear the whole of the evidence, on the proceedings read over." (103)

"The great attention you have given to this important trial will enable you to form a correct judgment. And if any doubt shall arise, I beg of you, in the benevolent spirit of the laws of your country, to give the prisoner, at the bar, the full benefit of such doubt."

"The opinion you are to give is to be formed on hearing the *evidence*, and on that alone; and if any *private information* should have reached you, I beg of you, to discard it from your minds."

"I also beg of you to reject any inferences which I have drawn from the evidence: unless you find them to be supported by the evidence before you."

The court is cleared, and the prisoner remanded to prison. Court cleared.

The proceedings are read over and compared with the fair copy. (104)

"The court proceed to deliberate."

Finding and sentence. "The court, having maturely deliberated on the evidence produced before them, are of opinion, that the prisoner, Serjeant Bryan Smith, 3rd company, 1st battalion of Artillery, is guilty of the charge preferred against him; and they do, therefore, sentence him, Serjeant Bryan Smith, 3rd company, 1st battalion of Artillery, to be hanged, by the neck, till he be dead." Finding and sentence.

(Signed) W. S. Whish, Lieutenant-Colonel, president.

(Signed) W. Hough, D. J. A. G. conducting the trial.

Approved and confirmed,

(Signed) Dalhousie, Commander-in-chief.

"The Governor General in Council concurs in the foregoing sentence of death, passed upon Serjeant Bryan Smith, 3rd company, 1st battalion of Artillery,"

(Signed) W. C. Bentinck.
,, Dalhousie.
,, W. B. Bayley.
,, C. T. Metcalfe. (104.)

10th April, 1830, Fort William.

(103) A member compared the fair copy, while the J. A. read the proceedings taken in court.

(104) "The sentence passed on Serjeant Bryan Smith is to be carried into execution at Karnal, under instructions which will be sent to Brigadier General Adams, C. B.; and the Commander-in-chief is pleased to direct, that this order

CONFESSION. The prisoner confessed his guilt. (105)

(A) Witness in company with deceased.

(B) Deceased drinking, and drunk.

(C) Hooqqu of prisoner.

(D) Witness left Malcolm's tent.

(E) Malcolm found dead.

(F) Prisoner never coming to the tent of deceased when dead.

(G) Late coming to the parade, when alarm given.

(H) Words used by prisoner, and confused appearance.

(I) Looking glass with stains of blood.

(J) Charcoal fire.

(K) Knife and fork.

(L) Bedding.

shall be read, immediately after its receipt, at the head of the Troops, at every station, assembled at a general parade for that purpose, and on a subsequent day, at the head of every Regiment, Troop, Company, or Detachment, serving on this Presidency.

By order of the Commander-in-Chief,

(Signed) CHRIS. FAGAN,

G. O. C. C. 21st April, 1830. Adj. Genl. of the Army.

(105) I wrote to the Chaplain to obtain the prisoner's confession. He showed my letter to the prisoner. At first he denied the whole altogether, and wrote out a solemn (in most awful terms) confession, stating that he had had no part in the horrid deed. A day or two previous to his execution, the Chaplain proposed the taking the *Sacrament* to him, but he hesitated and did not receive it. At the scaffold, he asked Mr. Parish, if there was any hope of salvation if he did not confess. Mr. P. said, he could not offer him any if he did not. He then requested to be allowed to go down to speak to the men of his company; the commanding officer asked, for what purpose, he said, to confess; he went down and exculpated every one of his fellow comrades from any partition in the murder, and said, he alone did the deed with his *hooqqu* bottom, after he had been half-mad, by his conscience most dreadfully torturing him for his continued debaucheries in the bazar, where he had only been an hour before, and that he owed poor Malcolm no hatred or ill-will. He was a *Roman Catholic* and a great friend of McEvoy's, (*20th witness,*) also a Roman Catholic. The prisoner spoke the language well, and was so liked by the natives, that a native soldier, it is said, offered to be hanged in his stead. He would, owing to his smartness and intelligence, have been appointed school-master, had he not committed this crime. There was a report a few days before his execution, that he intended naming four men as his accomplices. He was executed on the 12th of May, 1830.

A great many more witnesses were examined at the Court of Inquiry. The chaplain's and commanding officer's report as to the confession, embodied in this note, are attached to the proceedings in the J. A.'s office; in which the prisoner acknowledged the "*justness of his sentence,*" which is always satisfactory to all concerned. Confessions signed by a prisoner should be procured, if possible.

I recommend that confessions be always asked for.

(M) Prisoner's dress.
(N) Prisoner's cap.
(O) Quarrel.
(P) Malcolm's boxes found open.
(Q) Prisoner striking deceased.
(R) Moonlight.

CASES TO BE CONSIDERED with Note 64.

Case 1, from the *State Trials*. A woman was found in bed with her throat cut, during the absence of her husband: the husband's relations, occupying the apartment contiguous, through which alone there was access to the room of the deceased, had perpetrated the murder, and arranged matters so, that it might be supposed the woman had destroyed herself: but upon *her* left-hand was detected the bloody mark of *another left-hand*, which was of course conclusive against the supposition advanced by the murderers. (106) (See Section 2, Chapter II. Inquests. Questions to witnesses.)

(106) Keighly, J. A. G. Madras, Compendium of Evidence, p. 11, (*a*) case 2. He also gives the following case: Some years ago, a man was executed for murdering his father; four years afterwards, his sister, who had been chief witness against him, being on her death-bed, confessed she committed the murder. She disliked both her father and brother. The brother was heir at law, and often expressed a desire to come into the property, and had behaved (as she said) in an undutiful manner. On the evening of the murder, deceased went a short distance to milk a cow, and she went out to spend the evening and sleep, leaving her brother in the house; next morning she found both her father and brother absent, and being alarmed, sent for the neighbours; she went to the hovel where her father milked the cow, where they found him murdered. A suspicion fell on the brother. There was *snow* on the ground, in which footsteps were traced to, and from the hovel; they took one of the brother's shoes, which corresponded with the marks. They went to his room, and found a hammer in the corner of a private drawer, and several spots of blood upon it. The sister, being on her death-bed confessed, that she committed the murder, and had determined that both father and brother should die; and that when the father went to milk the cow, she followed him, with her brother's hammer, and in his shoes, killed the father, and laid it where it was found. She went from home to give color to the transaction against the brother, who she said was perfectly innocent; she died before brought to trial. (*Keighly's Compendium of Evidence*, p. 12. (*b*)

Case 3. Joan Perry and her two sons were executed for the murder of Mr. Harrison, who was afterwards discovered alive. *State Trials*, vol. 14. 1312. Sir Matthew Hale says, "I would never convict any person of *murder or manslaughter*, unless the fact were proved to be done, or at least the body found." *Starkie*, vol. i. p. 33. If a body be thrown overboard, it may not be found.

Case 4. "If a man shoots at a tame fowl, with an intention to steal it, and in so doing, accidently kills a man, this will be murder." *State Trials*, vol. xvi. p. 80. Because doing an unlawful act.

Witnesses for Prosecution.

1st. Serjeant Gregory, p.
2nd. Lieutenant A. Abbott, p.
3rd. Serjeant Fitzmaurice, p.
4th. Gunner Church, p.
5th. Corporal Stacy, p.
6th. Serjeant Sheridan, p.
7th. Bombardier Barker, p.
8th. Serjeant Ditchfield, p.
9th. Gunner Bains, p.
10th. Gunner Spencer, p.
11th. Gunner Robinson, p.
12th. Drummer Hannah, p.
13th. Gunner Stanney, p.
14th. Corporal Willis, p.
15th. Koosseal, p.
16th. Mugnee, p.
17th. Koolyee, p.
18th. Captain Brooke, p.
19th. Dr. Beil, p.
20th. Serjeant McEvoy, p.
21st. Corporal Browne, p.
22nd. Balkisson,(N. sentry,) p.
23rd. Gunner Singleton, p.
24th. Bombardier Day, p.
25th. Gunner Lee, p.
26th. Gunga, p.
27th. Byragee, p.
28th. Lieutenant Larkins, p.
29th. Dingoor, p.

Defence.

1st. Lieutenant F. Brind, p.
2nd. Gunner Ennis, p.
3rd. Corporal Browne, p.

Section 16.—Index to Act 9, Geo. IV. C. 81.

Abduction, Sections 67, 68.
Accessories, Sections 7, 8, 9, 54, 107.
Acts in force, Sections 21, 125, 126.
Admiralty Offences, Section 25.
Aiders and Abettors, Sections 38, 39.
Appearance compelled, Section 42.
Apprehension, Sections 40, 42.
Arson, Section 114.
Assaults, Section 89.
Attainder, Section 17.
Bail, Section 2.
Bigamy, Section 70.
Burglary, Sections 84, 85, 86.
Burning Crops, &c. Section 113.
Cattle killing, Section 122.
Certiorari, Section 49.
Challenges, Section 16.
Child stealing, Section 69.
Clergy, benefit of, Section 19.
Committal, Section 44.
Concealing Birth, Section 62.
Conviction, form of, Sections 47, 48, 49, 50.
Coroner, Duty of, Sections 5, 6.
Counterfeiting Deeds, Section 72.
Current Coin, 73.
&c. &c. 74, 75, 76.
Dams, breaking down, Section 121.
Destroying Looms &c. Sections 115, 116.
Banks (Rivers), Section 129.
Discharge, Section 45.
Embezzlement of money, &c. Sections 100, 101, 102, 103, 105.
Felonies, Sections 20, 21, 24.
Fines, Section 52.
Forfeitures, Sections 43, 124.
Forgery, Section 32.
General Issue, Section 51.
Homicide, Section 58.
Indictment, Sections 10, 11, 12.
Infamous Crimes, Section 83.
Interpretation of Statutes, Sections 26 79.
Judgment reversal, Section 13.
Jurisdiction, Sections 1, 127.
Justice of Peace, Sections 4, 6, 39 to 47.
Lands of Prisoner, Section 18.
Larceny, (*grand and petit, same,*) Sections 77, 78.
Letters, Threatening, Section 82.
Manslaughter, Sections 56, 57.
Miscarriage, Section 61.
Misdemeanor, (*see Justice of Peace.*)
Misnomer, Section 11.
Money obtained by threats, Sections 81, 106.
Murder, Sections 54, 55, 56, 59.
Nature of action, Section 51.
Oaths, Section 37.
Pardon, Sections 31, 33, 34.
Penalties, Section 34.
Petit Treason, Section 53.
Pledging Goods, Section 104.
Plea, Section 14, 15.
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Receivers of Stolen Goods, Sections 107 to 113.
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Restitution of property, Section 110.
Rioters, Demolishing, &c. Section 116.
Robbery from person, Section 50.
House, &c. 87, 88.
Sea, &c. Bank, &c. destroying, Section 120.
Seamen, forcing on shore, Section 71.
Sentence, Sections 22, 23, 24.
Recording death, Sections 27, 28, 29.
Transportation, Section 29.
Ships, setting fire to, Sections. 117, 118, 119.
Shooting, intent to rob, Section 60.
Sodomy, Section 63.
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Summary convictions, Sections 39, 42, 43 to 46.
Proceedings, Sections 39, 41, 42.
Transportation, returning from, Sec. 31.
Venue, in actions, Section 51.
Warrants, Search, Section 40.
Witnesses, after punishment indured, good, Section 34.
Misdemeanor, competent, (except perjury,) Section 35.
Affirmations, &c. Section 36.
Sworn according to their religion, Section 37.
Wrecks, plundering, Sections 90, 91, 92.

CHAPTER VII.

Section I.—Form of Will.

Will. In the name of God, Amen. I A. B. (Christian names and surname in full length, profession, &c.) being in sound mind, do make this my last Will and Testament, as follows :

Burial. 1st.—I desire to be buried decently, and with as little expense as possible.

Debts. 2nd.—I desire all my just debts to be paid. (1)

Property to wife. 3rd.—After payment of all my just debts and funeral expenses, I give and bequeath to Eliza, my wife, (2) the interest, of all the property, real or personal, I may die possessed of, or may accrue due to my estate, (3) till my children attain the age of 21 years, when they shall take two-thirds (4) of all my said property, principal and interest, with the following exceptions :

Expenses to England. 4th.—As there may not be funds to pay my wife's expenses and passage to England (should she wish to return there), as well as those of my said children, I direct the sale of such property, and the application and use of as much money as my executors may deem enough, and consistent with moderation.

Support and education of children. 5th.—I give the interest of all my property to my said wife, for her support, and that of my children, and as I calculate that, together with the military fund, &c. her income will be £ ——— a year, I desire that from —— to £ —— per annum be expended in the support and edution of my two children ; or as much as my executors may think reasonable.

If children marry before 21 years of age. 6th.—In case my children should marry with the consent of their mother (5) and guardians before attaining the age of 21 years, then each child to share and share alike, and to take their third share ; (or, if it be advantageous, to expend my son's share before he shall attain 21 years.) (5)

(1) It is advisable to leave a list of debts unpaid. It saves great trouble, when you have any number of receipts to get one in full of all demands.

(2) Brother or sister, &c.

(3) Or the interest of all such property, till my children attain the age of 21 years ; then the interest for life of one-third, or if no children, the principal and interest of all during life.

(4) The law in *intestacy* gives the widow half, if no children, and one-third, if children. *Blackstone*, ii. 515.

(5) Her consent not required if the two guardians thought the marriage proper ; or, in case it should be to the advantage of my son to sink the whole of his share

7th.—In case my wife should marry again, I desire that her life interest shall cease, and be held in trust by my executors and guardians, till my children attain the age of 21 years, or circumstances may arise as stated in clause 6. (6)

Wife re-marrying.

8th.—If my wife shall die before the said children shall attain the age of 21 years, then my guardians shall hold my said wife's share in trust for my said children, till 21 years of age, or till the cases cited in clauses 6 and 7 may arise. (7)

Wife dying before children of age.

9th.—In case of one of my children dying without issue, the remaining child shall take the share of the deceased child, and of the whole of my property, which may lapse to them, him, or her, under clauses 7 and 8.

Child dying without issue.

9th.—In case of a child dying, with issue, the share of such child shall go to the issue of such deceased child, share and share alike, and to the issue of their children, lawfully begotten, in all and every case.

Child dying with issue.

10th.—As education is of the first importance, I desire my daughter, consistently with the means, to be educated according to her station in life, (8) and my son, if his abilities afford reasonable prospect of such an expense being advantageous, to be sent to one of the Universities. (9)

Education of children.

11th.—I appoint A. and B. to be my executors and guardians in India, and C. D. to be my executors and guardians in England. (10)

Executors & guardians.

to advance him in life. At 16 years of age an opportunity of placing him out in life by the disposal of £3,000 may occur, but, if you wait till he be of age, it may be lost. Besides, I have known instances of cadets (16 years of age) who, their father being dead, could not have been, or otherwise, sent out to India!

(6) If the testator had plenty of money, he might not object to the marrying again and taking her share. If the mother's attention be not required by the children—say provided for in life, it seems immoral to refuse the widow's re-marrying. She may be the step-mother, or be only 32 or 33 of years age.

(7) Where there is not large property, not a six pence should go from the children to the wife's family. Be just before you are liberal.

(8) If a girl was left £3000, and by sinking 500 or £1000, she can be superiorly educated; there is no doubt, that such attainments with £2,000 will lead to a better marriage than £3,000 without them.

(9) A classical education is not of use, unless the son has abilities, and is studious. There is no doubt, that two years' education at one of the universities, if it cost £800, would, in some cases, be well laid out, and if £2,000 were left, he starts with the advantage of £5,000 or more, in life, as the slightest interest in India often pushes on such well-educated young men, on the staff, &c. and coming out at 18, instead of 16, years of age, is often time gained!

(10) If property in *England*, one or two there, and the same in *India*, but not to interfere with each other; that is, the *English* not to interfere as to *Indian* property; and, whenever the whole property and children shall be in *England*, then the duty of the Indian executors to cease. If the Indian executors die, the English to act. If the Indian be in England, all to act together.

Property sold.

12th.—All my property to be sold to the best advantage, (11) and the proceeds to be placed in the 3 p. C., (12) and, on no account placed on any personal security.

Disputes amicably settled.

13th.—In case any point in my will shall be disputed, it is to be settled, amicably, by my executors and guardians, on the spot; and if any legal procedings be taken, the share of such person in whose behalf it is taken shall be forfeited. (13)

Death or refusal of executors.

14th.—In case of the death, or refusal of both my named executors to act, or being absent from the Bengal Presidency, or in England, then I direct the committee authorised under the 6, Geo. iv. c. 61, A. D. 1825, to act till the said Indian executor shall return to the Bengal Presidency. (14)

Guardians to children.

15th.—I request my said executor to act as guardians to my children.

Wife's jewels, &c.

16th.—My wife's jewels and her clothes, &c. are her own property. I leave my watch, seals, and family plate (15) to my son. No clothes or articles belonging to my children to be sold. (16) My property to be paid over immediately after my death, (*which saves a year's loss of interest*, as above directed.)

Revoking all other Wills.

17th.—And I hereby revoke all other Wills (if any) by me made, and I do declare this to be my last Will and Testament. In witness whereof, I have hereunto set my hand and seal, this —— day of —— at *(place)* in the year of our Lord ———.

(Signed) C. D. in full length.

(It is advisable to sign each sheet.)

Signed, sealed, and published in the presence of us.

(Signed) E. F. (full length.)
G. H.
I. J. (17)

No. 2, soldier's will.

No. 2. PRIVATE SOLDIER'S WILL.—In the name of God, Amen. I A. B. (full length) Serjeant or Private, — Co. — Regiment, being in sound mind, after payment of all my just debts and funeral expenses,

(11) Except the landed or real property.

(12) The best stock, as it is not changable.

(13) May consult any lawyers or friends privately. The guardians not to be allowed to commence any suit, except to recover property, and not, then, if the result is likely to cost more than the sum to be recovered! If any executor takes legal steps, he shall pay the expense: except to recover debts.

(14) And to consult the reasonable wishes of my wife. The wife to be allowed to remain in the house till otherwise settled.

(15) Name any other property.

(16) If possible, to be avoided; debts must be paid.

(17) Three, if real property; one sufficient, if only personal property.

do leave and bequeath, whatever I may die possessed of, or may accrue due to, or may be coming to me, to, my wife. (18)

And I request my friends (18) to carry my intentions into effect, and to take charge of, and to pay, the amount of my property to the above-named persons. Witness my hand, this ——— day of ——— in the year of our Lord ———.

(Signed) C. D. (full length.)

Signed, Sealed, &c. in the presence of us.

E. F. (full length.)

G. H. (19)

No. 3. *Duties of Executors.*—1. Consult chapter iv. Duties of executors.

2.—To collect all his *goods and chattels*, not sold, to defray his funeral expenses and regimental debts; and those in the possession of other persons, at, or not at, the station. Pay and collect debts.

3.—To prove the Will, by employing a Proctor, and paying for the Probate. Prove the Will.

4.—To sell his goods and chattels to the best advantage, consistent with justice to all concerned. Sell goods

5.—To pay any public demands against the estate. Pay public debts.

6.—To pay bond debts. Bond debts.

7.—To simple contract debts. Simple contract, &c.

An executor should apply to the Supreme Court, through a Proctor; he need not leave his station, a commissioner to swear the party to the requisite affidavits, is issued by the court. Commission from supreme Court.

8.—For the improvident investment of money in private securities, or any security less than the Goverment funds, the executors or trustees are answerable; (20) or if in sure funds, allowing it to remain there. (21) Answerable for negligence.

9.—*Receipts.* To give and take receipts. For money paid to a married woman, to have it signed by husband and wife. All the executors, if they receive money, sign; he who receives only is answerable. (22) Receipts.

10.—No one is compelled to execute the office, unless he intermeddles. Cannot refuse in part; he must refuse entirely, or not at all. (23) May refuse to act.

If A and B are executors, B cannot act alone, if A is in the country, and has not refused.

"If there are many executors, and only one of them proves the Will, and takes upon himself the executorship, it is sufficient for all of them;

(18) Or consult the Will No. 1. Appoint executors.

(19) Three, if real property. The officer of the Company, Serjeant or Surgeon, &c.

(20) 3, *Swanst.* 63; *Hampson* on Trustees, p. 54.

(21) 5, Ves. 844; *Do.* 55.

(22) Two Touhl. 181; *Do.* 87.

(23) One Salk. 297; *Do.* Work on Duties of Executors, p. 14.

and the *rest may afterwards join with him:* but if all of them refuse, they cannot act during the life of the administrator. (24) Hence I argue that B cannot deprive A of his right." (25)

Agents should not be

11.—*Agents* should never be made executors, nor persons unwilling to act. (26)

Natural children.

12.—*Natural children.* As the duty is higher, it may be a question, whether leaving the money to the testator's father, mother, brother, or sister, to be given to the child, or children, may not be advisable. (27)

Executor's executor.

13.—A is executor, and dies, the executor of A becomes the executor. (28)

Section 2.

FORM No. 1.—(BAPTISM.)

Certificate of Baptism, performed at the Military Station of ———.

Year	Month.	Day.	Names of parties baptized.	When and where born.	Sex-names of parents. Residence and profession.	Where baptized.	Signature, by whom baptized.

Note.—The rite of Baptism to be performed by a Military Officer, (Layman,) under this Presidency, in cases of dangerous illness only. The Certificate is, in every case, to be forwarded according to this form, as soon as possible after the rite has been performed, and addressed to the Registrar of the Archdeaconry of Calcutta. G. O. G. G. in C. No. 79 of 1828, 11th April, 1828, (called for by Para. 2, G. O. No. 278, 28th December, 1827, *at stations and outposts where Chaplains do not reside.)* N. B. To be on a sheet of foolscap paper longitudinally.

(24) Peck. 485.

"If administration be granted before a refusal by the surviving executor, such administration will be void." (*Work on Executors,* p. 17.)

(26) Ask beforehand.

(28) Work on Executors, p. 67.

(27) There are no legacy duties in *India.* But the property may be in *England.* The legacy duties are:

1.—Children of deceased, or their descendants, or father or mother, or lenial ancestors of the deceased,.................................... 1 p. C.

2.—Brothers and sisters, &c. and their descendants,.................... 3

3.—Brothers and sisters of the father and mother, &c. and their descendants,.. 5

4.—To brothers and sisters of the grandfather or grandmother of the deceased,.. 6

5.—To any person in any other degree of collateral consanguinity, or to any strange in blood, (*and natural children,*) 10

The husband and wife, not chargeable.

(25) They got five p. C. in India!

FORM No. 2.—(MARRIAGE.)

Certificate of the Rite of Marriage performed at the Military Station of ———.

Year.	Month.	Day.	Signatures, with the profession and residence of parties.	Age, if under 21 years, or minors.	Signatures of parents or next friends, and residence.	Signatures of persons present.	Whether by Banns or License.	Where solemnized.	Signature, by whom solemnized.
			A		A	A			B

A. It is desirable that the parties, if they can write, should affix their own signatures in these columns.

B. To be signed by the officer who performs the ceremony.

Note.—The certificate, in the above form, to be sent, as soon as possible after the ceremony has been performed, to the Registrar of the Archdeaconry of Calcutta. G. O. G. G. in C. No. 79 of 1828, 11th April, 1828.

FORM No. 3.—(BURIAL.)

Year.	Month.	Day.	Name.	Profession and residence.	Where buried.	Signature, by whom buried.

Note.—The certificate is, in every case, to be forwarded according to this form, as soon as possible, after the rite has been performed, and addressed to the Registrar of the Archdeaconry of Calcutta. (G. O. G. G. in C. No. 79 of 1828, 11th April, 1828.)

SECTION 3.—THIEVES.

Thieves and trespassers. 1.—"Where a man, assaulted by thieves, having no weapon drawn nor having struck him, kills one, it is but justifiable homicide; and where, upon an outcry of thieves, in the *night time*, a person, who was concealed in a closet, but no thief, was in the hurry of the moment and surprise, stabbed in the dark, it was considered as an innocent mistake, and ruled to be homicide by this adventure. And where an officer pushed violently and abruptly into a gentleman's chamber early in the morning, in order to arrest him, not telling his business, nor using words of arrest; and the gentleman, not knowing that he was an officer, under the first surprise, took down a sword that hung in the chamber, and stabbed him; it was ruled manslaughter at common law, though the defendant was indicted on the statute; for the defendant not knowing the officer's business, might, from his behaviour, have reasonably concluded, that he came to rob or murder him." *Russell on Crimes*, vol. i. 492.

Concealed in the house.

Person rushing into the house.

Servant may aid his master. 2.—"A servant may kill a man to save the life of his master, if he cannot otherwise escape." (*Do.* p. 500.)

Felons flying from justice. 3.—"If a felony be committed, and the felon fly from justice, or a dangerous wound be given, it is the duty of every man to use his best endeavours to prevent an escape; and in such cases, if fresh pursuit be made, and *a fortiori* if *hue and cry* be levied, all who join in aid of those who began the pursuit, will be under the same protection of the law: and the same rule holds, if a felon, after arrest breaks away as he is being carried to jail, and his pursuers cannot re-take him without killing him. Thus where, upon a robbery committed by several, the party robbed raised the hue and cry, and the country pursued the robbers, and one of the pursuers was killed by one of the robbers, it was held that this was murder, because the country, upon *hue and cry* levied, are authorized by law to pursue and apprehend the malefactors."

May be seized and killed.

Private persons if felony has been committed, or attemped. "But where private persons endeavour to bring felons to justice, it should be ascertained that a felony has actually been committed, or that an actual attempt to commit a felony is being made by the party arrested: for if that be not the case, no *suspicion*, however well grounded, will bring the person so interposing within the protection of the law." (*Russell*, vol. i. 502,)

Detected attempting to commit felony. 4.—The late case where *Headley*, being called up in the night by one of his servants, found that his stable had been attempted, and the door cut in such a manner that the bolt was exposed, and found the prisoner and another person concealed in the yard; and a steel instrument was also found by which the door of the stable appared to have been cut, and some house breaking instruments were also found, near the spot where the

prisoner and his companion were concealed, and under these circumstances they had been apprehended and detained by *Headley* and his servant, and during such detention, and in the course of the same night, the prisoner had cut *Headley's* servant with a knife. The judges held that the prisoner being detected in the night attempting to commit a felony, might be lawfully detained without a warrant until he could be carried before a magistrate." (*Rex. v. Hunt. East. T.* 1825.) *Russell*, vol. i. 503.

5.—*Night-walkers.* "It is said, that if peace officers meet with *night-walkers*, or persons unduly armed, who will not yield themselves, but resist or fly before they are apprehended, and who are upon necessity slain, because they cannot otherwise be overtaken, it is no felony in the officers or their assistants, though the parties killed were innocent. But it is doubted whether, at this day, so great a degree of severity would either be justifiable or necessary (especially in the case of a bare flight), unless there were a reasonable suspicion of felony. And it has been considered, that the taking up of a person in the night, as a night-walker and disorderly person, though by a lawful officer, would be illegal, if the person so arrested were innocent, and there were no reasonable grounds of suspicion to mislead the officer." (*Russell*, vol. i. p. 506.

Night-walkers.

Reasonable suspicion of felony.

6.—*Trespassers.* "If they flee or defend themselves with force and arms, if the *foresters*, &c. kill such offenders, either in arresting or taking them, *they* (*foresters, &c.*) shall not be punished. But they cannot kill persons who come to take only decayed wood." (*Russell*, vol. i. 548.)

Trespassers, may kill, if taking property.

7.—*Those attempting to rob, &c.* "By the *statute* 24, *Hen.* viii. *c.* 5. any person attempting to rob or murder any persons, in or near any common way, &c. or in their mansions, messuages, (1) &c., or attempting to break into any dwelling in the night-time, and should in such attempt be slain by *those whom they so attempt to rob or murder, or by any person being in their dwelling-house, attempted to be broken open*, the person so happening to slay, shall be acquitted and discharged. And so in the case of killing one who attempts the wilful burning of a house." (2)

Attempting to rob.

(1) Includes a house, land to it, garden, orchard, &c. and so we may say "*Compound*," in *India*.

(2) Russell, vol. i. p. 549. 1. "In the case of *Levet*, being in bed and asleep, his servant who had procured Frances Freeman to help her about her work, and went to the door about 12 o'clock at night to let her out, conceived that she heard thieves about to break into the house: upon which she ran to *him*, and told him of what she apprehended. *Levet* arose immediately, took a drawn sword, and, with his wife, went down stairs: when the servant, fearing that her master and mistress should see F. F. hid her in the buttery. *Levet* with his sword searched the entry for thieves, when his wife, spying F. F. in the buttery, and not knowing

A person found in the house killed in the dark.

SECTION. 4.—COMMANDS, (*G. O. C. C. 6th Sept.* 1826.)

Command, duties of.

1.—The senior officer of a corps, who also commands a brigade or station, should give up the command of his regiment to the next

her, conceived her to be a thief, and cried out to her husband in great fear, "*Here they be that would undo us:*" when *Level*, not knowing that it was F. F. in the buttery, hastily entered with his drawn sword, and being in the dark, and thrusting before him with his sword, thrust *Frances* under the left breast, and gave her a mortal wound, of which she instantly died. This was ruled to be *misadventure:* but judge *Foster* thought it ought to have been *manslaughter:* due circumspection not having been used. But *Hawkins*, that he was justified. (*Russell, vol. i. p.* 550.)

Trespasser on lands killed in sudden passion.

2. "If A finds a trespasser on his lands, and in the first transport of passion, beat him and kill him, it was held *manslaughter*, but it must be *merely to chastise*. For if A had knocked out his brains with a bill or hedge stake, or killed him by an outrageous beating with an ordinary cudgel, beyond the bounds of a sudden resentment, it would have been *murder*." (*Russell, vol. i. p.* 440.)

Pick-pocket.

3. "Where a pick-pocket was ducked, with no intention to take away his life, and was drowned, it was ruled to be *manslaughter*." (*Russell, vol. i. p.* 489.)

Killing person making an entry, manslaughter, not in a bare trespass.

4. "If A in defence of his house kill B, a trespasser, who endeavours to make an entry upon it, it is at least common manslaughter; unless, indeed, there were danger of his life. But if B enter into the house, and A having first requested him to depart, gently lay his hands upon him to turn him out, and then B turn upon him and assault him, and A then kill him, it will be *se defendendo*, supposing he was not able by any other means to avoid the assault, or retain his lawful possession. A being in his own house, need not fly as far as he can, as in other cases. *But when the trespass is barely against the property of another, the law does not admit the force of the provocation as sufficient to warrant the owner in making use of any deadly or dangerous weapon; more particularly if such violence is used after the party has desisted from the trespass. But if the beating be with an instrument or in a manner not likely to kill, it will amount to manslaughter: and it is even lawful to exert such force against a trespasser who comes, without any color, to take the goods of another, as is necessary to make him desist.*" (*Russell, vol. i. p.* 545.)

May repel force by force.

5. "A, man may repel force by force in defence of his person, habitation, or property, against any one who manifestly intends and endeavours, by violence or surprise, to commit a known felony upon either." It seems, therefore, that the intent to murder, or commit other felonies with force or surprise, should be apparent, and not left in doubt."

Intent to steal deer.

6. "*Sir William Hawkesworth*, blamed his keeper for suffering his deer to be destroyed, and commanded him to *execute the law*, came himself into the park at night as if with intent to steal the deer, and being questioned by the keeper, who knew him not, and refusing to stand or answer, he was shot by the keeper. This—was decided to be *excusable* homicide by the statute *de malefactoribus inparcis*. (*i. Hale*, 40.) (Russell, vol. i. p. 549.)

Cannot shoot any one, on suspicion.

7. *Francis Smith's case.* This man shot the *Hammersmith ghost.* The neighbourhood had been alarmed. Smith determined to watch for, and shoot the *ghost.* He was tried at the O. B. 3rd January, 1804. The jury gave a verdict *guilty of manslaughter*."

The Judge said it must either be *murder, or of acquittal.* If the jury believed the facts, there was no extenuation that could be admitted; for supposing that the

senior officer. The officer commanding the corps is held responsible for the discipline of the corps. But he must not alter the standing orders, or established practices of the regiment without the sanction of the senior and permanent commanding officer. To consult the general officer commanding the district.

2.—To consult the senior officers regarding the promotion of the non-commissioned officers, the promotion rolls of native officers, or regimental staff appointments. If any differences exist, to be stated in the letter or return sent to head-quarters.

3.—To maintain unanimity and good understanding with the officers. Courtesy to all officers, and to uphold the consequence of the junior officers.

Reports of arrival and departure at and from stations.

REPORTS. All officers, arriving at or leaving the presidency, to report their arrival to the adjutant general, (the town major, returning from Europe or sea,) the officer commanding the presidency division, and the staff officer of the presidency division. Medical officers in addition, to report to the Secretary to the Medical Board. Officers, of the Ordnance and Barrack Departments, to the Secretary to the Medical Board, and other staff officers generally, to the heads of their department. *G. O. C. C. 10th November*, 1820, *21st May*, 1827, *12th July*, 1824.

Medical Officers, Civil or Military, to report to the Superintending Surgeon of their division, on joining or quitting any corps, or being ill and incapable of duty. (*G. O. C. C. 28th June*, 1822.)

" Officers to report themselves on passing military stations to the commanding officer and staff officers. If ill, to do so in writing. Medical officers to wait upon the superintending Surgeon. All officers, and medical officers proceeding to join a regiment, to report weekly

unfortunate man was the individual really meant (*ghost*), and had been shot, the prisoner would have been guilty of murder. Even with respect to *civil* processes; if an officer of justice uses a deadly weapon, it is *murder* if he occasions death by it, even although he had a right to apprehend." Verdict "*guilty*."

The L. C. B. reported the case to H. M. *Respite during pleasure*, and on 25th January, 1824, *a pardon*, on condition of being imprisoned *one year*." (*Celebrated Trials*, vol. v. p. 57—4578.

Remarks. Must be a necessity.

REMARKS. From the above cases it seems clear that, unless a trespasser in an officer's compound be caught carrying off some property, and flies, or property found on him and he resists, and cannot otherwise be seized, you have no right to shoot him. If he be found with implements or arms, it is just cause to seize him. "*If trespassers in forests, parks, &c. will not surrender themselves to the keepers, they may be slain. But in all these cases there must be a necessity.*" Blackstone, iv. 180. If a man be seen coming over a wall, through a hole in it, or breaking a wall of a compound, he cannot be shot; were he tried, he would not suffer death.

to the commanding officers (*G. O. C. C.* **21st September**, 1825.) When at stations, to call on the staff to read the G. O.

Officers proceeding to the hill provinces to report to the political officers, whether proceeding in the Company's or protected states, their arrival, and proposed route. At Subathoo, Deyrah, &c. (*G. O. C. C.* 13*th August*, 1831.)

Memorials.

3.—*Memorials*, if to the Court of Directors, in triplicate; if not, in duplicate. (*No.* 3933, 30*th January*, 1829. *A. G. O.*) One officer signs, the rest agree to it, and sign on a separate sheet, their names, rank, and regiment. The names on all should be origiual signatures.

Days not legal sitting days.

4.—*Dies not juridicus.* "Sunday; Ascension-day; St. John Baptist; All Saints and all Souls; and the Purification of the Virgin Mary." (*Tomlin's Law Directory, title Day*). ***But military courts do not sit on Sundays, and keep sacred no other day.***

Native general courts-martial to be explained to corps.

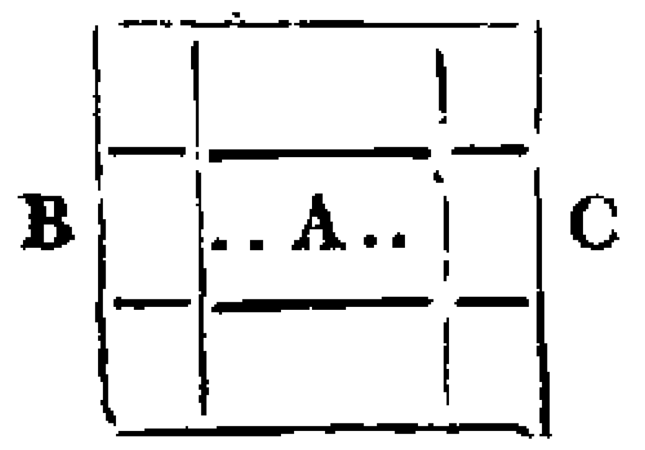
5.—"The finding and sentence of native general courts-martial, published to the army, to be carefully explained through the medium of the interpreters, to all native corps." (*G. O. C. C.* 18*th* October, 1823.)

Float, Chinese, or life preserver.

6.—*Float, Chinese,* to save lives at sea. In the year 1730, it was used by some Chinese merchants. A ship expected to founder; they came upon deck in a bamboo palist: four bamboos, two before and two behind, were placed horizontally, and projected about 28 inches. They were crossed on each side by two others, and the whole properly secured, having a space for the bodies; so that they had only to put it over their heads, and tie the same securely, which was done in two minutes, and we were satisfied they could not possibly sink. The shape is given below.

A The body.

B } The arms over on each side.
C }



Annual Register, iv. 4. 1761. p. 141, or four single bamboos (hollow) may do. They may be hollowed out, and then joined. (*See case* 9. *Sec.* 2. *Inquests.*

Renting houses.

SECTION 5.—RENTING HOUSES, ***not liable if burnt down, unless agree to be answerable.***

Agreement bonds.

1.—*If* a tenant *covenants* to repair the premises during the term (of lease), if they are burnt down by fire or ***lightning, blown down by tempest,*** or destroyed by any other accident, or by the King's enemies, although not rebuilt by the landlord, he will be bound to pay rent during the term, and to rebuild them at the end of the lease.

Agree not to be answerable.

2.—But if the covenant, "*Casualties from fire,* &c. excepted," be inserted in the lease, the tenant will not be subject to rebuild the con-

sumed premises, and perhaps a Court of Equity would compel the landlord to rebuild them. And if the landlord commences an action for the rent, an injunction will be granted to stay the action till the premises are rebuilt.

3.—"When a tenant covenants to keep a house in repair, he is not answerable for the natural and visible decay of the premises; but is bound to keep it only wind and water tight, so that it does not decay for want of cover. And a tenant from year to year is only bound to fair and tenantable repair, so as to prevent waste and decay of the premises; not to substantial and lasting repairs, such as new roofing &c. (1, *Term Reports*, 590.) Williams on Landlord and Tenant, p. 6, 7. See Gifford, p. 422, and Woodfall's Landlord and Tenant.

Repairs, wind and water tight only.

4.—*Remarks*. In India, a house bungalow is rented at a sum, usually yielding from 18 to 20 per cent., and the landlord is bound to make repairs. The high rent is for the risk. The tenant ought to pay for broken panes of glass by the *negligence* of his servants, or any injury done by them. Not extending to burning by accident or design by them, (the latter involves their trial for *Arson*.) *For accidents* are included in the risk. Negligence is quite distinct. If your servants by negligence, runs against the carriage of A, A can recover from you. But if your servants burn down A's house, you would not have to pay; for if the house were ensured the insurance office would pay, except destroyed by a mob, where the hundred would pay: and so should the landlord, who charges for risk. A rents his house to B, the house is worth 3,000 rupees interest at 12 per cent. rupees, 360 rupees a year, or 30 rupees a month; say the repairs cost 180 rupees a year, 60 rupees is not uncommon, or 720 rupees yearly, deduct 180, and the balance 540 rupees is 18 per cent., which is for the extra risk—the rent is 24 per cent.

Remarks. Answerable for negligence not accidents by servants.

It is presumed no gentleman would allow a brother officer to lose, but it should depend upon the rent, whether high or low. I should say 20 per cent. or 50 rupees a fair rent. But unless B agrees to repair damage, he is not *legally* bound, and if he does agree, he should make A *reduce* his rent!

Section 6.—Sale of House.

If B buys a house, &c. from A, A should make B agree to these terms, that the house shall be B's property when paid for. This is done at Madras. Each should have a copy of the agreement signed by both parties. Whatever money is paid to A, should be endorsed on the back, as in the case of bonds, and B should do the same, and keep A's receipt.

Sale of houses. No ownership till paid for.

The object is this, if B. be in debt, and died before payment, unless there existed some instrument, A would only be a simple contract creditor, (and if a bond creditor, there may be others,) the house would be seized to pay B's debts! Whereas, as the house is not paid for, nor B's till the condition be performed, it cannot be touched.

If B died before he paid A, A on paying back the money paid by B and deducting for rent, might have the house back, if so agreed upon. The agreement should state this, and that any additions made of a useful kind, and not for personal convenience, should be repaid, to be settled by mutual friends.

The object is equitably to secure A from loss, and no gentleman ought to object to such an arrangement.

If B calls a committee to value A's house, and B had agreed to rent it for 12 months, six of which are unexpired, the committee should give A either the rent, or a sum equal to the difference between the rent at 12 per cent. and if the whole be not paid down, 12 per cent. interest for the time of the credit. B cannot properly demand a committee till the lease is out.

Section 7.—Bribes. *(Rishwut.)*

The natives enter in their books all monies paid away, and on what account, and to whom paid; still if A. paid a *bribe* to B he would not state the purpose, probably would pay to C for B, and enter paid —— rupees to C. The proof therefore, must be parol; for no entry or receipt will ever appear. Even in *secret service money*, it is never asked of any General officer to whom he gave it, he renders his accounts of disbursement upon honor.

Section 8.—Prostitutes.

"The wages of prostitution is not allowed by law, and therefore never awarded by the Court of Requests, in Calcutta; nor would any agreement in relation to such transactions be allowed to be brought before such court."

"The Court of Requests in Calcutta, except where both plaintiff and defendant are natives, is governed by the English law. In cases of claims for the wages of prostitution by one native against another, the English law of exclusion would be enforced.

"Where a prostitute works *out* of her vocation, she might be entitled to wages, if she should have served as nurse, ayah, or in any such capacity." (*Vide Courts of Requests, case* 1, *chapter* 5.

Section 9.—New Trial.

1.—By clause 16, M. A. 1832, and Section 16, 4, Geo. iv. c. 81, no soldier, &c. is to be tried twice for the same offence, except in case of appeal from a regimental to a general court-matial. But where a soldier

at *Dum-Dum* had been tried for sleeping on his post in 1827, by a *regimental*, the crime being only cognizable by a *general*, court-martial; the Commander-in-chief disapproved of the trial, and directed the prisoner to be tried a second time by a general court-martial. So that if a man has been illegally tried, it is competent to try him again:—for, though the legislature intend that there should not be two trials, it does not mean that the prisoner shall escape punishment by a flaw or a mistake.

2.—A new trial may take place where the court is reduced below the legal number of members, or, as occurred in the case of Lieutenant-General Lord George Sackville, when the act expired during the trial; or, where officers during the trial have been invalided, or otherwise are not in the situation to continue their seats as members.

SECTION 10.—REBELLION.

To W. B. Bayley, Esq. Secretary to Government, Judicial Department, from Advocate General Spankie, relating to native detachment Court-martial in Cuttack, 14th September, 1817, to 4th March, 1818.

SIR,

Prisoners of Cuttack.

I have the honor to acknowledge the receipt of your letter of the 14th instant, transmitting, by direction of the Honorable the V. P. C. various documents respecting the cases of certain prisoners, (1) tried by courts-martial in Cuttack; and in reply, I have to request that you will lay before the Honorable the V. P. C. the opinion I have formed upon this subject.

Martial law under Regulation X. of 1804.

1.—It appears by the documents referred to, that martial law was put in force in Cuttack under the orders of Government, by virtue of Regulation X. of 1804.

For safety of British possessions, &c.

Taken in arms.

Or open overt act.

Or openly aiding and abetting enemies.

2.—The preamble of the regulation states, "that it may be expedient, in certain cases therein mentioned, that the G. G. in C. should declare and establish martial law for the *safety of the British possessions, &c.* by the *immediate punishment* of persons owing allegiance to the British Government, who may be *taken* in arms in *open hostility* to the said Government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the *act* of *openly* aiding and abetting the enemies of the British Government, within any part of the territories above specified.

3.—This enacting part, conformably to the object developed in the preamble, enacts, (section 2,) "That the G. G. in C. shall be empowered, among other things, to direct the immediate trial by courts-martial, of all persons owing allegiance, and who shall be *taken* in arms in

(1) Villagers, &c.

Or opposing by force, Government. *open* hostility to the British Government; *or*, in the act of opposing, by *force* of arms, the authority of the same, *or* in the *actual* commission of any *overt* act of rebellion against the state, or in the act of *openly* aiding and abetting the enemies of the British Government.

Four overt acts. 4.—*Four* overt acts are enumerated, and it seems to me clear that the word *taken* in the *first*, must in necessary construction be carried forward and annexed to each member of the sentence containing the description of the overt act; indeed the sentence would not make sense without it.

5.—Here the circumstances in which courts-martial are to have authority to try, are clearly marked and defined. The criminals must be *taken* in *open* acts of the treasonable and rebellious descriptions mentioned. Treasonable and rebellious.

6.—It seems to me also liable to some doubt whether the *fourth* overt act specified in the regulation, does not mean an *aiding* and abetting of such enemies of the British Government as are contemplated, both in the preamble and in section 2—*enemies* with which the British Government may be engaged in war—not rebels with arms in their hands. Aiding and abetting enemies of Government.

7.—If there could be any doubt of the extent of the authority and jurisdiction of the courts-martial, under Regulation X. of 1804, it would be removed by the instructions of 11th April, 1805, (2) communicated, for their guidance, to the authorities in Cuttack, during the late disturbances. These instructions (para. 4) say—" If any person or persons charged with any of the overt acts of rebellion specified in Regulation X. of 1804, shall be apprehended by any military officer, when not in the *actual commission* of offences of that description, they are to be delivered over by the military to the civil power, &c. Instructions, 11th April, 1805.

9.—The courts-martial in Cuttack do not appear to have considered themselves as at all confined to the cases of prisoners *taken flagranti delicto*, or even to traitorous and rebellious acts, of the specific quality stated in the regulation. They seem to have acted as if they had possessed an unqualified jurisdiction over all treasonable and rebellious acts, without limitation of time, place, or circumstances. The charge (conforming, as in all limited jurisdictions it ought, to the cases in which the jurisdiction is given,) does not state the circumstance of the criminals being *taken* in the *fact*, or that it was in some open act of the treasonable rebellious quality, which alone the court-martial could lawfully try. Taken flagranti delicto. Must be treasonable, rebellious.

10.—The 1st case is, " For rebellion against the British Government, by being seized with arms in the house." Seized with arms in the house.

(2) General Harcourt's command.

11.—The court find him guilty of a breach of allegiance to the British Government. *Sentence*, four years' imprisonment in the convicts' jail at Cuttack.

12.—The prisoner is acquitted of *rebellion*—the only part of the charge made a crime under the regulation.

13.—The next case, 1st, Being seized with arms in his house. 2nd, Deputing four suwars to find out whether Atchet Puddaun was off his guard. 3rd, Having in his possession four orders signed by the chieftain of the rebels, addressed to various parts of the Dandmals. 4th, For preventing the well-affected inhabitants from returning to their allegiance to the British Government, by threatening them with death. 5th, Alarming the inhabitants of the Dandmals, which had just returned to a state of tranquillity, by creating and circulating false reports of its being the intention of the chieftain of the rebels (*Jugbundoo Bryadhun*) to attack this post with 14 pieces of cannon, and 4 or 5,000 men, by which means he prevented the remaining few from returning to their allegiance.

Arms in the house, deputing, possessed of four orders from a chief, preventing others returning to allegiance.

Alarming inhabitants by false reports.

14.—Found guilty of the 2nd, 3rd and 4th charges, acquitted of 5th; on *revision*, guilty of 5th, (para. 15.)

16.—The 5th charge, the same as the preceding. No *open overt* acts, as specified in the regulation.

No open overt acts stated.

17.—The next case, "For having taken up arms and aided and abetted in a rebellion against the state."

Taken up arms and aided, &c. rebellion.

18.—Found guilty, and sentenced to be hanged.

19.—Here the court, who find the prisoners guilty, or (in the words of the charge,) would have been justified and bound to find them guilty of having taken up arms at any time, or having aided and abetted in any manner, which such court might have construed to be, aiding and abetting at any time, without the qualification of the prisoner being taken in the *actual* commission of any crime, or in any *open* act of the description specified in the Regulation.

20.—The next case, "For high treason, for aiding and abetting the insurgents in this district, in one or either of the following instances: 1st, For adhering to and accompanying the insurgents in this district. 2nd, For selling a quantity of salt belonging to Government, and defrauding Government of the same. 3rd, For collecting the money in this neighbourhood, from the cultivators, for the insurgents, and for being in the capacity of a collector on the part of Jugbundoo, at the same time he was seized.

High treason.

Adhering to, &c. insurgents.

Selling salt and defrauding Government. Collecting money.

21.—Guilty of 1st charge, acquitted of the 2nd or 3rd charge, acquitted of collecting money from the cultivators, but guilty of the rest of the charge. *Sentence*, to be hanged.

22.—The 2nd charge is a mere fraud. The aiding and abetting, which amounted to treason or rebellion, were not well defined. Acquitted of collecting money from the cultivators, but guilty of being a collector on the part of *Jugbundoo*, "at the time *he* (not distinguishing whether *he* refers to the prisoner, or Jugbundoo) was seized."

23.—It is doubtful, whether this prisoner was guilty of any offence. He certainly is not charged with being taken in the *actual* commission of any offence, or of the open overt acts specified in the regulation.

Aiding, abetting, or joining rebellion.

24.—25.—The next case is—first, for aiding, abetting, or joining in, a rebellion against the legal authorities of the state, between the month of March, 1817, and the present period. Second, for joining or following the rebel chief *Kurnakun Purraun Gooroo*, some time during the abovementioned period.

26.—Acquitted of the 1st, guilty of the 2nd, charge—*sentence*, to be hanged.

27.—2nd prisoner acquitted.

28.—The 3rd prisoner charged—"for aiding, abetting, or joining in, a rebellion against the legal authorities of the state, between the month of March, 1817, and the present period.

29.—Guilty—to be hanged. (*Three other cases the same.*)

34.—No *taking* specified—though the court may have received evidence of what they considered aiding, abetting, or joining, at any time whatsoever, from the 17th March, (1818) 1817.

35.—The last case.—36. Charge the same.—37 guilty—to be hanged.

38. Same remark as to those immediately preceding.

Illegal.

39.—The whole of the proceedings and sentences, illegal.

Should be cases of simplest kind. To try those taken in overt act of rebellion, or openly aiding enemies, or taken in arms.

40.—The manifest intention of Government, in its legislative capacity, was, that none but cases of the simplest and most obviously criminal nature should be the subject of trial by the courts-martial: the fact whether a person was *taken* in the actual commission of an overt act of rebellion, or taken in the act of *openly* aiding and abetting the enemies of the state, or taken in arms in *open* hostility, might safely be tried by such courts, and such a provision for trial was calculated to prevent military severity in the field, becoming absolute massacre.

No complex cases.

But all complex cases, depending upon circumstantial proof, and requiring either a long examination of facts, or a discriminating inference from facts, in themselves equivocal, were purposely withdrawn from the cognizance of these tribunals. It never was intended that courts-martial should try, as those have done, acts even of a criminal nature in which the prisoner was not *taken*; and unless the acts were *open overt* acts, and of the most material palpable quality.

41.—To guard against a dangerous usurpation of authority, the charge should have stated, that the prisoner was *taken* in the *actual commission of some open overt act*, of the description specified in the regulation; for without such limitation, the court-martial is let in to try all manner of traitorous, treasonable, and rebellious acts, direct or indirect. It does not appear that the distinctions required, both by the regulations and by the positive instructions of Government, have been at all regarded in practice.

Charge should state, being taken in actual commission of overt act.

42.—Some of the cases exhibit instances of laxity in the charge, and indeed in the conception of the nature of the crime, which sufficiently evince the danger that would ensue if the courts were not to be most strictly limited, both as to the extent of their authority, and the defined quality of the offence submitted to them.

Laxity of charge.

43.—It is possible, though I think, it is not either morally or legally to be presumed in the present case, that some of the prisoners tried may have been *taken* in the fact, as required by the regulation. But on the face of the proceedings the sentences are wholly *illegal*, and I think that no punishment whatever can legally be inflicted upon them. Indeed, they are so utterly void, that the prisoners, if they be guilty, and if it be thought advisable, might still be prosecuted before the criminal courts of ordinary jurisdiction. The humanity of the Commander-in-chief (3) and military commissioner of the district, (4) has led him to commute all the sentences by which death was to be inflicted, so that if the proceedings be irregular, the consequences are not irreparable.

Sentences illegal.

Might be re-tried by criminal courts.

44.—The proceedings of those courts-martial, appear to be in some other respects irregular, and seem to indicate, a misapprehension of their proper functions and jurisdiction.

45.—The object of martial law, and the trial of offenders under it, is justly stated in the Regulation X. of 1804, to be *immediate punishment*, for the "safety of the British possessions and for the security of the lives and property of the inhabitants thereof." It is in fact the law of social self-defence, superseding, under the pressure, and therefore, under the justification, of an extreme necessity the ordinary forms of 'ustice. Courts-martial, under martial law, or rather during the susension of law, are invested with the power of administering that rompt and speedy justice, in cases presumed to be clearly and indisneably of the highest species of guilt. The object is self-preserva-, by the terror and the example of speedy justice. But courts-ial which condemn to imprisonment, and hard labor, belie the

The object is immediate punishment in times of danger.

Sentences of imprisonment and hard labor belie necessity.

(3) Marquis of Hastings.

(4) Lieutenant-General Sir G. Martindell, K. C. B.

necessity under which alone the jurisdiction of courts-martial can lawfully exist in civil society.

May commute sentences of death.

To try cases requiring sentences of death, not minor crimes.

46.—I would not be understood to mean, however, that the superior military authorities may not properly commute the punishment of death in cases in which, in the first heat and danger of rebellion, sentence of death has been given by a court-martial. It seems important, however, that the court-martial itself should be confined to cases of the most obvious and dangerous criminality, admitting, as far as they are concerned, but of one sentence. It is essential to preserve the distinction of crimes, and the character of the jurisdiction, and that the lenity of the tribunal should not become an argument for the unnecessary employment of it.

The above cases might have been tried by the ordinary courts.

47.—In all the cases above considered, there appears no reason why the criminals might not have been sent before the ordinary courts, agreeably to the express directions and instructions of Government. It seems desirable that the attention of the military authorities should be drawn to the distinctions laid down in the Regulation X., and in the instructions of Government, as long as the existence of martial law is found necessary.

Supreme Government must quash the whole.

48.—The proceedings and sentences of the courts-martial are illegal, and I conceive that as a court of law, in *reviewing* the proceedings of inferior jurisdictions, sets aside the *whole*, where error, and particularly want of jurisdiction, manifestly appear—the Supreme Government, exercising the same functions of *review* and control, must quash the whole of the illegal proceedings; and cannot consider them the foundation of any lawful punishment at all. (5)

I have, &c.

(Signed) R. SPANKIE,

Advocate General.

Fort William,

27th April, 1818.

(5) The having arms concealed in houses should be a punishable crime. An act of the above kind (X. of 1804) should allow of military courts trying such cases, under certain circumstances. There may be various acts, such as concealing persons, supplying grain, circulating papers, exciting disaffection, &c. which should all be defined, and the punishment laid down. They might be tried by military courts, but should be *general* courts-martial, say with 7 native officers, or 5, or even 3, if more could not be assembled without inconvenience; and have a D. J. A. G. It may be inconvenient to hand them over to the civil power. The courts (military) might be framed as under the *Irish Suppression Rebellion Act.* (1833)